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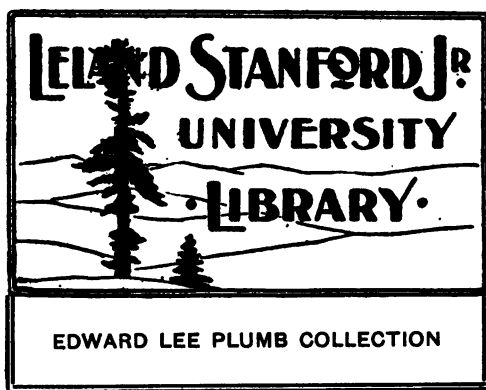
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EDWARD LEE PLUMB COLLECTION

Arizona Coll -

San Diego, California
May 1914



ACTS, RESOLUTIONS AND MEMORIALS.

ACTS,
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
SEVENTH LEGISLATIVE ASSEMBLY
OF THE
TERRITORY OF ARIZONA.

SESSION BEGUN ON THE SIXTH DAY OF JANUARY, AND
ENDED ON THE FOURTEENTH DAY OF FEBRUARY,
A. D. 1878, AT TUCSON.

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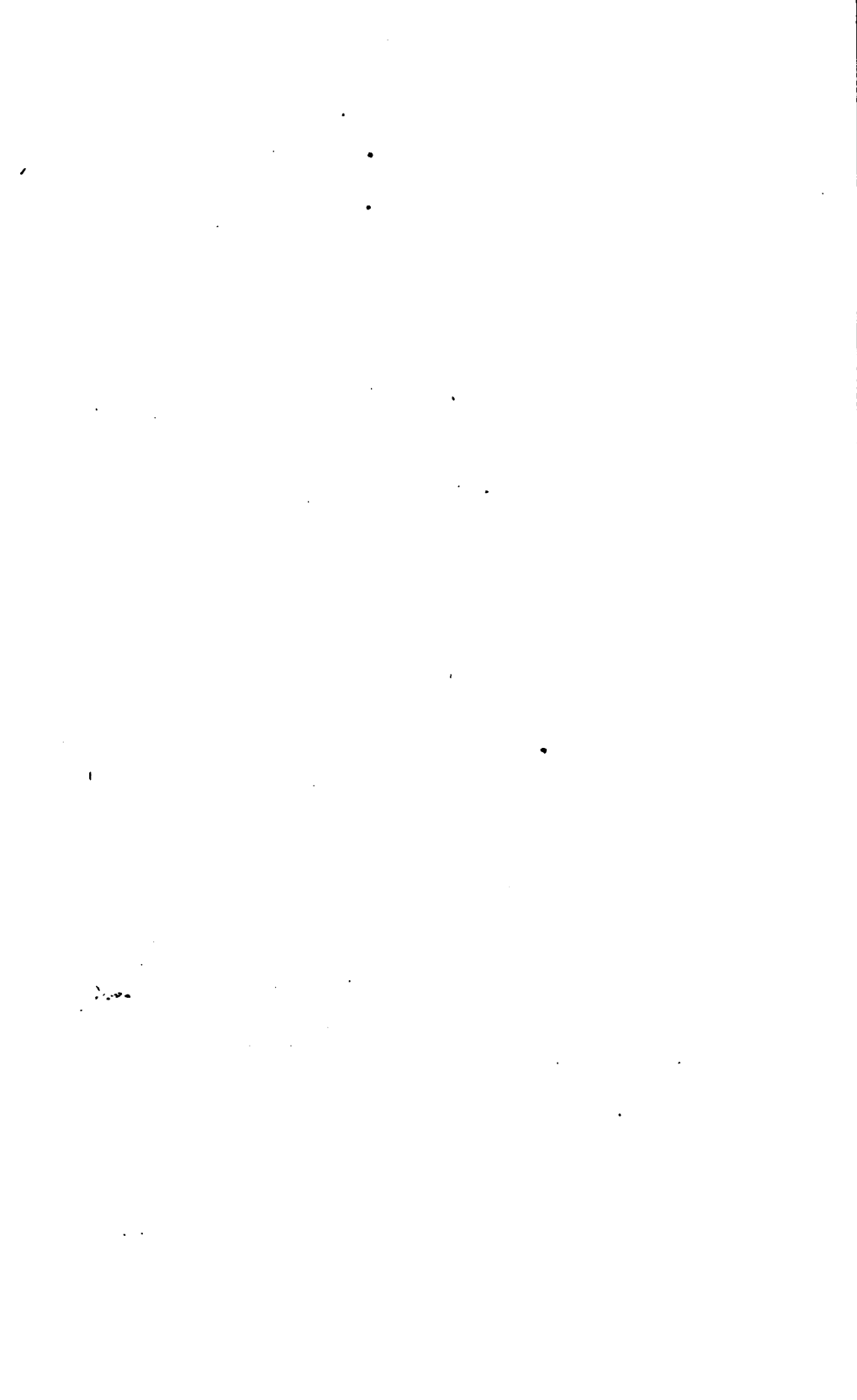
TERRITORY OF ARIZONA,

OFFICE OF THE SECRETARY.

I, COLES BASHFORD, Secretary of the Territory of Arizona, do hereby certify that the ACTS, RESOLUTIONS and MEMORIALS herein contained are printed as passed by the Seventh Legislative Assembly of the Territory, according to the enrolled copies upon file in my office.

WITNESS my hand and the seal of the Territory,
given at Tucson, this first day of March, A. D.
[L. S.] eighteen hundred and seventy-three.

COLES BASHFORD,
Sec'y of the Territory.



OFFICERS OF THE TERRITORY

1873.

FEDERAL.

POSITION.	NAME.	LOCATION.
Delegate in Congress	R. C. McCormick	Washington.
Governor	A. P. K. Safford	Tucson.
Secretary	Coles Bashford	Tucson.
Chief Justice	John Titus	Tucson.
Associate Justice	C. A. Tweed	Phenix.
Associate Justice	De Forest Porter	Yuma.
District Attorney	James E. McCaffry	Tucson.
Surveyor-General	John Wasson	Tucson.
Marshal	I. Q. Dickason	Prescott.
Superintendent Indian Affairs...	Herman Bendell	Prescott.
Collector Internal Revenue	Thomas Cordis	Prescott.
Assessor Internal Revenue	H. A. Bigelow	Prescott.
U. S. Depositary	C. H. Lord	Tucson.
Deputy Collector Customs	J. W. Hopkins	Tucson.
Register of Land Office	W. N. Kelley	Prescott.
Receiver of Land Office	George Lount	Prescott.

TERRITORIAL.

POSITION.	NAME.	LOCATION.
Adjutant-General	J. S. Vosberg	Tucson.
Auditor	A. C. Benedict	Tucson.
Treasurer	John B. Allen	Tucson.
Attorney-General	James E. McCaffry	Tucson.

Y. A. Izrael, Moscow

THE SEVENTH LEGISLATIVE ASSEMBLY.

COUNCIL.

NAME.	RESIDENCE.
<i>Yavapai County.</i>	
J. P. Hargrave.....	Prescott.
A. O. Noys	Prescott.
<i>Yavapai and Maricopa Counties.</i>	
King S. Woolsey	Agua Caliente.
<i>Yuma County.</i>	
Thomas J. Bidwell.....	Ehrenburg.
<i>Yuma and Mohave Counties.</i>	
W. F. Henning	Mineral Park.
<i>Pima County.</i>	
H. S. Stevens	Tucson.
Mark Aldrich.....	Tucson.
Juan Elias	Tucson.
Levi Ruggles	Florence.

HOUSE OF REPRESENTATIVES.

NAME.	RESIDENCE.
<i>Yavapai County.</i>	
John H. Behan	Prescott.
William Cole	Bradshaw Mines.
Fred. Henry	People's Valley.
Thomas Stonehouse.....	Williamson Valley.
Henry Wickenburg	Wickenburg.
<i>Maricopa County.</i>	
G. H. Oury	Phenix.
<i>Yuma County.</i>	
C. W. C. Rowell	Yuma.
J. M. Redondo.....	Yuma.
C. H. Brinley	Yuma.
<i>Yuma and Mohave Counties.</i>	
George Gleason	Mineral Park.
<i>Pima County.</i>	
John B. Allen	Tucson.
William C. Davis	Tucson.
Lionel M. Jacobs	Tucson.
J. S. Vosberg.....	Tucson.
F. M. Larkin	Sanford.
John Montgomery	San Pedro.
John T. Smith	Tubac.
John W. Sweeney	Florence.



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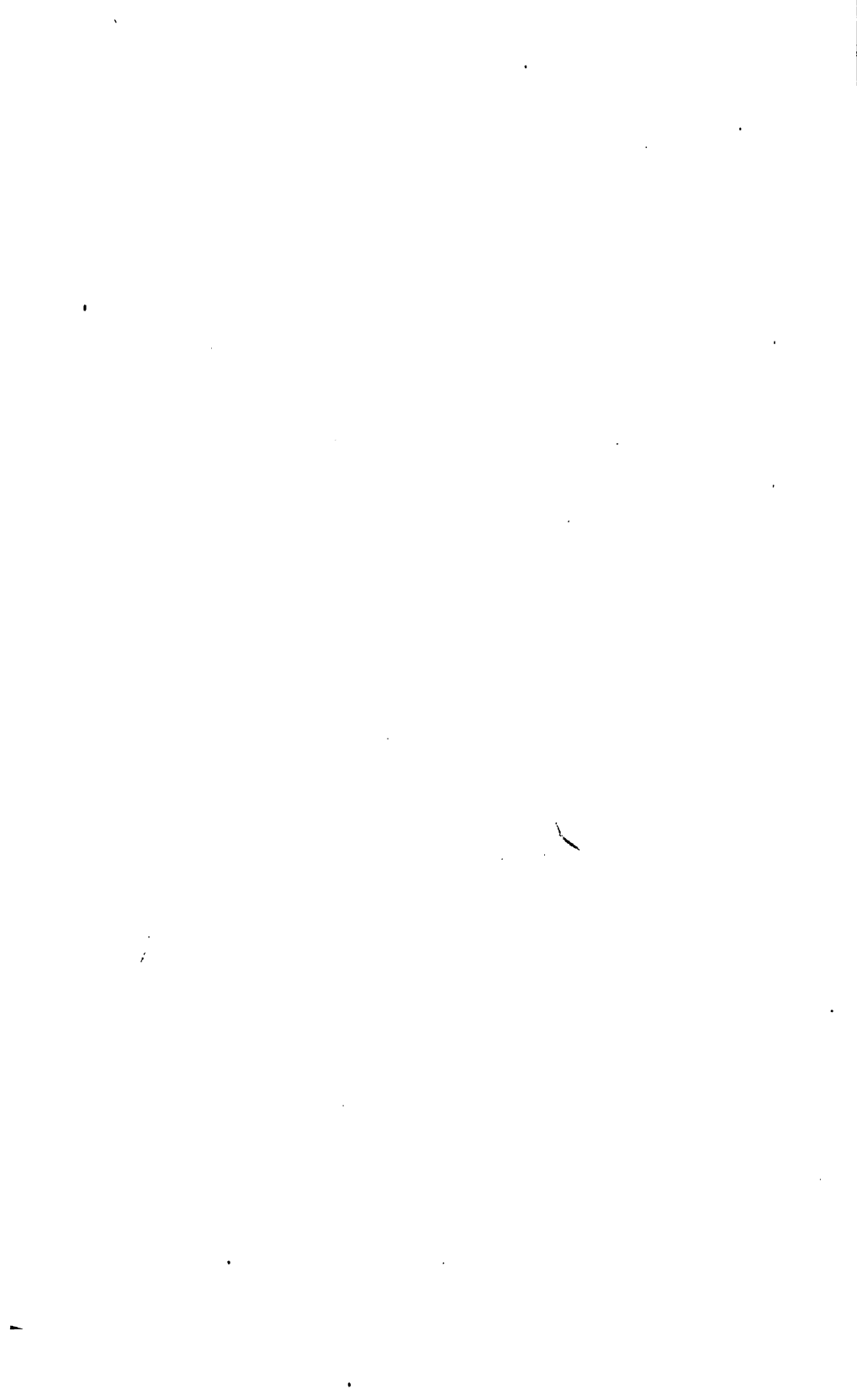
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ACTS.



ACTS.

AN ACT

To divorce A. P. K. Safford from the bonds of matrimony heretofore existing with Jenny L. T. Safford.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That Anson P. K. Safford, now residing in the county of Pima, Territory of Arizona be, and he hereby is, divorced from his wife, Jenny L. T. Safford; that the bonds of matrimony heretofore existing between them be, and the same hereby are dissolved; that he be, and hereby is, forever released therefrom; and that said marriage heretofore contracted and existing between him and his said wife be, and hereby is, annulled; and that the said Anson P. K. Safford and Jenny L. T. Safford have the right to marry again.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED January 18th, 1873.

AN ACT

Legalizing the acts of Charles Baker as a member of the Board of Supervisors of Yuma county.

WHEREAS, Charles Baker, one of the Supervisors elect of Yuma county, failed to file his oath of office as such Supervisor within the time required by law, but has since, to wit: On the

6th day of January, A. D. 1873, duly qualified as such Supervisor; therefore,

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That all official acts of Charles Baker, as a member of the Board of Supervisors of the county of Yuma be, and the same are, hereby confirmed, so far as the same may be in accordance with law.

SEC. 2. That the qualification of the said Charles Baker, as such member of the Board of Supervisors of said Yuma county, after the time allowed by law, be considered, and is hereby declared to be of the same force and effect as though such qualification had been done within the time provided by statutes; and he is hereby authorized to hold his office as such Supervisor for the term to which he was elected.

SEC. 3. This act shall be in force from and after its passage.

APPROVED January 21st, 1873.

AN ACT

To locate the County Seat of Mohave County.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That, within sixty days from and after the passage of this act, a special election shall be held in the County of Mohave, for the purpose of permanently locating the county seat of said county.

SEC. 2. That, within thirty days from and after the passage of this act, the Board of Supervisors of said county shall meet for the purpose of establishing the precincts and the polling places throughout said county, and appointing the Inspectors, Judges and Clerks of election, in the manner now provided for by law.

SEC. 3. That the Clerk of the Board of Supervisors shall, immediately after the meeting of said Board required by the preceding section, cause notice of said election, together with the names of Inspectors, Judges and Clerks so designated and appointed, to be posted in each election precinct of the county, for a period of twenty days prior to the day set for the holding of said election.

SEC. 4. That each voter shall designate upon his ticket the name of the locality at which he desires the county seat to be located.

SEC. 5. That the Inspector of each election precinct in said county shall return the result of said election to the Supervisors of the county, in the same manner and within the same time as now provided by the general election law of this Territory.

SEC. 6. That the Board of Supervisors shall canvass the election returns, within the same time and in the same manner as is provided by the general election law of this Territory, and the locality receiving the largest number of votes shall be the county seat on and after that date.

SEC. 7. That within twenty days after the declaration of the result of said election, all books, records and chattels of the county shall be transferred to the place designated as having received the largest number of votes as per section six of this act.

SEC. 8. In all other respects, not herein provided for, the said election shall be managed and conducted as required by the general election law of this Territory, and the qualifications of voters shall be the same as now required by law.

SEC. 9. This act shall take effect and be in force from and after its passage.

APPROVED January 22d, 1873.

AN ACT

Fixing the compensation for mileage of members of the
Legislative Assembly of the Territory of Arizona.

*Be it enacted by the Legislative Assembly of the Territory of
Arizona:*

SECTION 1. That the members of each branch of each Legislative Assembly shall receive fifteen cents per mile each way in going and coming from their place of residence to the capital of the Territory, the distance traveled to be computed from the schedule of distances, as traveled in transporting the United States mails over the mail routes of the Territory.

SEC. 2. The members of the present Legislative Assembly shall receive the above compensation at the present session.

SEC. 3. The above compensation shall be paid to the persons named in section one of this act by the Territorial Treasurer, out of any money in the Territorial Treasury, not otherwise appropriated, upon a warrant to be drawn upon the Treasurer by the Auditor of the Territory in favor of the parties entitled thereto.

SEC. 4. At the adjournment of each session of the Legislative Assembly, the Auditor shall draw warrants in favor of those entitled under the preceding sections of this act for the amounts due to each.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED January 24th, 1873.

AN ACT

To change the name of Daniel Lee Pierce to Daniel Lee Noyes.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the name of Daniel Lee Pierce, son of William Pierce, deceased, and Emma M. Pierce, now the wife of Albert O. Noyes, be, and the same is, hereby changed to Daniel Lee Noyes.

SEC. 2. It shall be lawful for the said Albert O. Noyes to adopt the said Daniel Lee Noyes mentioned in the first section of this act, and make him, the said Daniel Lee Noyes, his heir at law, and to that end the said Albert O. Noyes shall, within sixty days after the passage of this act, file in the office of the Probate Judge of Yavapai county, his statement in writing, declaratory of his intention to adopt the said Daniel Lee Noyes under the provision of this act, and an acknowledgment of the said Daniel E. Noyes as his heir at law, which said declaratory statement and acknowledgment shall be made of permanent record, by entry in full upon the records of the Probate Court of Yavapai county, and the said Daniel Lee Noyes from that time hence shall be the lawful heir of the said Albert O. Noyes, in all respects as though born his lawful son.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED January 28th, 1873.

AN ACT

To authorize the County Treasurers of the several counties of this Territory to appoint deputies.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the County Treasurers of the several counties of this Territory may, and they are hereby authorized to

appoint deputies, who shall have authority to do and perform all the duties of their principals.

SEC. 2. The appointments of such deputies shall be in writing, and filed with the County Recorder of the proper county.

SEC. 3. Deputy County Treasurers shall take the oath of office prescribed by law, which shall be subscribed and filed with the appointment in the office of the County Recorder.

SEC. 4. All the acts of a Deputy County Treasurer shall be in the name of the principal, and the principal and his sureties shall be liable for the acts of the deputy.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED January 28th, 1873.

AN ACT

To encourage Scientific Medical Practice and to prevent Quackery.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Any person within this Territory who shall hold himself or herself out to the public as a practitioner of medicine or surgery, and who shall, for pay, or reward, or gratuity, practice medicine or surgery, without having first received from some medical college, school, or institution of learning, a license or diploma, showing and reciting that such person was, at the time of the issuance of such license or diploma, sufficiently educated and duly authorized by such institution to enter regularly upon the practice of medicine or surgery, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not less than fifty nor more than two hundred dollars, to be fixed by the court before whom such person is tried; but, upon a second conviction of the same person of like offense, he shall be punished by fine of not less than two hundred nor more than three hundred dollars, and be im-

prisoned for a period of not less than three nor more than six months, in the discretion of the court.

SEC. 2. When any person shall sue another in any court in this Territory for services rendered by him as a physician or surgeon, the defendant in any such action may plead that such person was not, at the time of the rendition of such service, a duly educated and licensed physician or surgeon, and, upon the interposition of such plea, it shall be incumbent upon the plaintiff to produce his authority and license to so practice medicine or surgery, and if he fail to do so (unless he explain to the satisfaction of the court or jury trying said cause, the cause of its non-production), the defendant shall have judgment for his costs.

SEC. 3. This act shall not be considered as applying to persons who shall prescribe for the sick in town, village or settlement in which there is no regularly educated physician practicing.

SEC. 4. This act shall not be in force until ninety days after its passage.

APPROVED January 31st, 1873.

AN ACT

Amendatory of Chapter ten of the Howell Code, entitled of Crimes and punishment, and acts amendatory thereto.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Section twenty-one, of chapter ten of the Howell Code, entitled, "Of crimes and punishments," is hereby amended to read as follows: "Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison or lying in wait, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree,

and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person charged with murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree; but if such person shall be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime and give sentence accordingly. Every person convicted of murder of the first degree shall suffer death, and every person convicted of murder of the second degree shall suffer imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life."

SEC. 2. Section one of an act entitled "An act to amend section twenty-six, of chapter ten, Howell Code, of 'crimes and punishments,'" is hereby amended to read as follows:

"§ 26. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the Territorial prison for a term of not less than one nor more than five years."

SEC. 3. This act shall be in force from and after its passage.

APPROVED January 31st, 1873.

AN ACT

Amendatory of Chapter twenty-four of the Howell Code, entitled "of General and Special Elections."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Section thirty-one of said act is hereby amended to read as follows:

§ 31. On the second Monday after any general election, the Board of Supervisors of each county shall meet at the county seat of their respective counties, and shall proceed to canvass the vote of the county, a statement of the result of which shall be drawn up and signed by the Chairman of the Board. Said statement shall contain the names of the persons voted for; the office for which each person was voted for; the

number of votes given at each precinct to each of such persons, and the number of votes given to each in the county; and the same shall be filed, together with the returns from each precinct, in the office of the County Recorder of the county.

SEC. 2. This act shall take effect on and after its passage.

APPROVED January 31st, 1873.

AN ACT

To appropriate money for Educational purposes.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That there be and is hereby appropriated out of the general fund of the Territory the sum of one thousand five hundred dollars; of which said sum the county of Pima shall receive three hundred dollars, the county of Maricopa three hundred dollars, the county of Yavapai three hundred dollars, the county of Yuma three hundred dollars, and the county of Mohave three hundred dollars.

SEC. 2. The Territorial Auditor shall draw his warrant upon the Territorial Treasurer, in favor of the County Treasurer of each of said counties, for the amount appropriated to such county by section one of this act, and shall deliver the said warrants to the several County Treasurers in whose favor the same shall have been drawn; and upon presentation of such warrant, the Territorial Treasurer shall pay to such County Treasurer the sum of money to which such county shall be entitled under the provisions of this act.

SEC. 3. The several County Treasurers of the counties of Yavapai, Mohave, Yuma and Maricopa shall each receive, hold, disburse and account for the moneys they shall receive under the provisions of this act, as moneys received by such County Treasurer from the Territorial Treasurer for the benefit of public schools in their several counties.

SEC. 4. The County Treasurer of the county of Pima, upon receiving the sum of money appropriated to the said county of

Pima by section one of this act, shall at once notify the County Superintendent of Public Schools for the said county of Pima thereof; and, upon receiving such notice, the said County Superintendent of Public Schools for the county of Pima shall draw his warrant on the County Treasurer of the county of Pima, in favor of Sister Mary Emerentia, Superioress of the Academy of St. Joseph, for the sum of three hundred dollars, and shall deliver the said warrant to the said Sister Mary Emerentia. Upon presentation of the said warrant to the said County Treasurer, he shall forthwith pay to the said Sister Mary Emerentia the said sum of three hundred dollars, received by him as aforesaid from the Territorial Treasurer, to be by the said Sister Mary Emerentia expended for the benefit and use of the Academy of St. Joseph, at Tucson, in the said county of Pima: *Provided*, that Territorial warrant No. 383, drawn on the 17th day of October, 1872, for three hundred dollars, in favor of "Sisters St. Joseph," shall be first surrendered and delivered to the Territorial Auditor, who, upon receipt thereof, shall indorse upon the said Territorial warrant "*Canceled, without payment*," and forthwith notify the County Treasurer of the county of Pima that he has received the said warrant.

SEC. 5. "An act to appropriate money for educational purposes," approved February 18th, 1871, is hereby repealed; and all other acts and parts of acts in conflict with this act are hereby repealed, so far as they may obstruct or interrupt the execution of this act, and no farther.

SEC. 6. This act shall take effect and be in force from and after its passage.

APPROVED February 1st, 1873.

AN ACT

To facilitate the payment of the debt of Yuma county.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That from and after the first day of March, A. D. 1873, the County Treasurer of the county of Yuma shall, of all moneys received by him as such Treasurer, apportionable

to the general fund of said county, pay and apportion fifty per centum of such moneys to a fund to be designated as the "Sinking Fund" of said county; the other fifty per centum of such moneys to go to the general fund of said county, as now provided by law.

SEC. 2. Whenever there shall have accumulated in said "Sinking Fund" the sum of five hundred dollars, the Treasurer of said county shall advertise in a newspaper printed in said county (or if there be no newspaper printed therein, then by posting in at least three public places in said county), for a period of fifteen days, that, upon a day in such notice named, he will receive bids for the surrender of county warrants to the amount of the money then in the Sinking Fund of said county, specifying the sum then in said fund.

SEC. 3. Bids shall be in the form of sealed proposals, directed to the County Treasurer of said county, and marked "Sinking Fund."

SEC. 4. On the day named in the advertisements, between the hours of two and four P. M., the chairman of the Board of Supervisors, or in case of his inability to attend, some other member of such Board, shall, with the County Treasurer, proceed to the office of the latter, and there publicly open all proposals, and the said Treasurer and member of the Board of Supervisors present shall accept those proposals offered at the lowest rate and most favorable to the county, for the surrender of county warrants: *Provided*, that no bid for more than par value of said warrants, or any bid, unless accompanied by the warrant or warrants proposed to be surrendered, shall be considered, and if no member of the Board of Supervisors attend with the Treasurer at the time and place specified, to act upon the proposals, then the Treasurer may fix some other time for opening such proposals, when some member of the Board can be present.

SEC. 5. Whenever any bids are accepted it shall be the duty of the County Treasurer to pay to the person offering such bid the sum of money for which such warrants are offered, and cancel such warrants so surrendered in the same manner as though paid out of the general fund of said county, except that he shall indorse upon each warrant so paid out of the said "Sinking Fund," the rate at which it was paid, and the whole amount paid on such warrant.

SEC. 6. The bids being at equal rates, the preference shall be given to the person offering the smallest amount of warrants, and the bids and the amount of warrants being equal, each shall be accepted *pro rata*, or as nearly so as possible. The County Treasurer shall return all unaccepted bills, together with the warrants therein contained, to the owners on demand.

SEC. 7. The County Treasurer shall keep a separate account under the head of "Sinking Fund," of all moneys placed to that fund, and the said money shall not be used or mixed with other funds. The provisions of this act are hereby extended and made applicable to the county of Mohave, and shall have the same force and effect in said county as the same is intended to have in the county of Yuma.

SEC. 8. This act shall be in force on and after its passage.

APPROVED February 3d, 1873.

AN ACT

To provide for the appointment and prescribe the duties of Guardians.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. The Probate Judge of each county, when it shall appear necessary or convenient, may appoint guardians to the persons and estates, or either of them, of minors who have no guardian legally appointed by will, and who are inhabitants or residents in the same county, or who shall reside without the Territory and have any estate within the county. Such appointment may be made on the application, by petition, of a relative, or any person interested in or befriending such minor. Before making such appointment, the Judge shall cause such notice to be given to the relatives of the minor residing in the county, and to any person under whose care such minor may be, as he shall on due inquiry deem reasonable.

SEC. 2. If the minor is under the age of fourteen years, the Probate Judge may nominate and appoint his guardian; and if he is above the age of fourteen years, he may nominate his

own guardian, who, if approved by the Judge, shall be appointed accordingly.

SEC. 3. If the guardian nominated by the minor shall not be approved by the Judge, or if the minor shall reside out of the Territory, or if, after being duly cited by the Judge, he shall neglect for ten days to nominate a suitable person, the Judge may nominate and appoint the guardian, in the same manner as if the minor were under the age of fourteen years.

SEC. 4. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the Probate Judge.

SEC. 5. The father of the minor, if living, and, in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the guardianship of the minor.

SEC. 6. If the minor have no father or mother living and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

SEC. 7. Every guardian appointed as aforesaid shall have the custody and tuition of the minor, and the care and management of his estate, until such minor shall arrive at the age of twenty-one years, or shall marry, or until the guardian shall be discharged according to law. Whenever any person shall be appointed guardian of a minor, the Probate Judge may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education and welfare of the minor; and such conditions shall be deemed to be a part of the duties of the trust of such guardian, and for their faithful performance he and the sureties on his bond shall be responsible.

SEC. 8. Before the order appointing any person guardian under this act shall take effect, and before letters shall issue, the Judge shall require of each person a bond to the minor with sufficient sureties, to be approved by the Judge, and in such sum as he shall order; and when the penal sum of the bond exceeds two thousand dollars, each of the sureties may become liable for portions thereof, making in the aggregate the whole penal sum, and said bond shall be conditioned that the

guardian shall faithfully execute the duties of his trust according to law.

And the following conditions shall be deemed to form a part of such bond without being expressed therein: 1st. To make a true inventory of all the estate, real and personal, of his ward that shall come to his possession or knowledge, and to return the same within such time as the Judge shall order; 2. To dispose of and manage all such estates according to law, and for the best interests of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody and education of the ward; 3. To render an account on oath of the property, estate and moneys of the ward in his hands and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court shall direct, and at the expiration of his trust to settle his accounts with the Probate Judge, or with the ward if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys and effects remaining in his hands, or due from him on such settlement to the person or persons who shall be lawfully entitled thereto.

Upon filing such bond duly approved, letters of guardianship shall issue to the person appointed. In form, the letters of guardianship shall be substantially the same as letters of administration, and the oath of the guardian shall be indorsed thereon, that he will perform the duties of his office, as such guardian, according to law.

SEC. 9. All the provisions of sections seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six and eighty-seven of the act entitled "An act to regulate proceedings in the Probate Court," shall apply to this act.

SEC. 10. If any minor who has a father living has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being paid to the situation to the father's family, and to all the circumstances of the case, the expenses of the education, and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable, and shall be directed by the Probate Court, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

SEC. 11. The father of any child who is a minor may, by his last will and testament, appoint a guardian or guardians of such

child, whether born before or after the time of making such will, and, in case of the death of the father, the mother of such child may, in like manner, appoint a guardian or guardians, if such child shall not then have any legally appointed guardian; and every testamentary guardian shall give bond and qualify, and shall have the same powers, and perform the same duties, with regard to the person and estate of such minor, as guardians appointed by the Probate Court, except as far as the said powers and duties may have been legally modified, enlarged or changed by the will by which such guardian was appointed.

SEC. 12. Nothing contained in this act shall affect or impair the power of any court to appoint a guardian to defend the interest of any minor interested in any suit or matter pending therein, nor to appoint or allow any person, as the next friend of a minor, to commence and prosecute any suit in his behalf.

SEC. 13. Whenever it shall be represented to the probate judge upon petition, under oath, by any relative or friend of any insane person, or of any person who, by reason of extreme old age or other cause, is mentally incompetent to manage his property, that such person is insane or mentally incompetent to manage his property, said Judge shall cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the case, not less than five days before the time so appointed, and shall also cause such person, if able to attend, to be produced before him on the hearing.

SEC. 14. If, after a full hearing and examination upon such petition, it shall appear to the Probate Judge that the person in question is incapable of taking care of himself and managing his property, he shall appoint a guardian of his person and estate with the powers and duties hereinafter specified.

SEC. 15. Every guardian so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward, and the management of all his estate until such guardian shall be legally discharged; and he shall give bond to such ward, in like manner and with like conditions as before prescribed, with respect to the guardian of a minor.

SEC. 16. Every guardian appointed under the provisions of this act, whether for a minor or any other person, shall pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient, and if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided by law.

SEC. 17. Every such guardian shall also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the Probate Judge, compound for the same, and give a discharge to the debtor on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

SEC. 18. Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary for the comfortable and suitable maintenance and support of the ward, and his family if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward, and his family if there be any.

SEC. 19. The guardian may join in and assent to a partition of the real estate of the ward, in the cases and in the manner provided by law.

SEC. 20. Every guardian shall return to the Probate Court an inventory of the estate of his ward, within three months after his appointment, and at such other times as the Probate Court may order; and he shall return to said court additional inventories whenever any further property belonging to said estate, not included in previous inventories, shall come to his hands, and if there be no estate, he shall return that fact under oath. Each of such inventories shall be sworn to by the guardian, and the property comprised therein shall be appraised by the appraisers who shall be appointed, and shall proceed in the manner provided by the laws regulating the settlement of the estates of deceased persons, and when so appraised it shall be recorded by the Clerk of the Probate Court in a proper book kept in his office for that purpose.

SEC. 21. When the income of the estate of any person under guardianship shall not be sufficient to maintain the ward and his family, or to educate the ward when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor and proceeding therein as provided in this act.

SEC. 22. When it shall appear to the satisfaction of the court, upon the petition of the guardian, that it would be for the

benefit of his ward that his real estate, or some part thereof, should be sold in order that the proceeds thereof may be put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of said ward, his guardian may sell the same for such purpose, upon obtaining an order therefor and proceeding therein as provided in this act.

Sec. 23. If the estate is sold for the purpose mentioned in the twenty-first section of this act, the guardian shall apply the proceeds of the sale to such purpose, as far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Sec. 24. If the estate is sold for the purpose of putting out or investing the proceeds, as provided in this act, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

Sec. 25. To obtain an order for such sale, the guardian shall present to the probate court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of such sale, which petition shall be verified by the oath of the petitioner.

Sec. 26. If it shall appear to the court or judge from such petition that it is necessary, or would be beneficial to the ward that such real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or judge shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate.

If it appear that it is necessary, or would be beneficial to the ward, to sell the personal estate, or some part of it, the same proceeding shall thereupon be had in reference to notice of the

application, and to ordering a sale and making such sales as are provided in relation to sales of personal estate by executors or administrators.

SEC. 27. A copy of the order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or shall be published at least three successive weeks in some newspaper printed in the county, to be designated by the court, or judge, or if there be none printed in the county, or by posting notices in at least three public places in the county.

SEC. 28. The probate court, at the time and place appointed in such order, or such other time as the hearing shall be adjourned to, upon proof of the due service or publication of the order, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin and all other persons interested in the estate who shall think proper to oppose the application.

SEC. 29. On such hearing, the guardian may be examined on oath, and witnesses may be produced, and examined by either party, and process to compel their attendance, and testimony may be taken by the probate court, or judge, in the same manner and with like effect as in other cases.

SEC. 30. If any person shall appear and object to the granting of any order prayed for under the provisions of this act, and it shall appear to the court that either the petition or the objection thereto is unreasonable, said court may in its discretion award costs to the party prevailing and enforce the payment thereof.

SEC. 31. If after a full examination it shall appear to the court either that it is necessary or would be for the benefit of the ward, that his real estate, or some part of it, should be sold, such court may grant an order therefor, specifying therein for which of the causes or reasons mentioned in sections twenty-one and twenty-two of this act, said sale is necessary or proper, and said court may, if the same has been prayed for in the petition, order such sale to be made at either public or private sale, upon like proceedings and in the same manner as provided by law, in case of a sale of real estate by an executor or administrator, and subject to the same proceedings in relation to the confirmation or rejection of the sale or the resale thereof.

SEC. 32. Every guardian authorized to sell real estate as aforesaid, shall, before the sale, give bond to the Probate Judge, with sufficient security to be approved by such Judge, with condition to sell the same, in the manner prescribed by law for sales of real estate by executors and administrators; and to account for and dispose of the proceeds of the sale in the manner provided by law.

SEC. 33. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as prescribed in the case of a sale of land by an executor or administrator; the same proceedings shall be had as to the return of the sale and the confirmation thereof, and the order to execute a conveyance, as is prescribed in regard to sales of land made by executors or administrators, and the confirmation shall have the same force and effect.

SEC. 34. No order of sale granted in pursuance of this act shall be in force more than one year after granting the same.

SEC. 35. No action for the recovery of any estate, sold by a guardian under the provisions of this act, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within three years next after the termination of the guardianship, excepting only that minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within three years next after the removal of their respective disabilities.

SEC. 36. The guardian shall, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the Probate Court for settlement and allowance; and all the laws relative to the accounts of executors and administrators shall govern in regard to the accounts of a guardian, so far as they can be made applicable.

SEC. 37. The Probate Court, on the application of a guardian or of any person interested in the estate of any ward, after such notice to persons interested therein as the Probate Judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and also any other money in his hands, in real estate, or in any other manner that shall be most to the interest of all concerned therein; and the said Probate Court may make such further orders and give such directions

as the case may require for managing, investing and disposing of the estate and effects in the hands of the guardian.

SEC. 38. When any guardian, appointed either by the testator or the Probate Judge, shall become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, or shall have wasted or mismanaged the estate, the Probate Judge, after notice to the guardian, may remove him; and every guardian may, upon request, be allowed to resign his trust, when it shall appear to the Probate Judge proper to allow the same, and upon every such resignation or removal, and upon the death of any guardian, the Probate Judge may appoint another in his place.

SEC. 39. The marriage of any person who is under guardianship as a minor shall terminate such guardianship; and the guardian of any insane person, or other person, may be discharged by the Probate Judge when it shall appear to him, on the application of the ward or otherwise, that such guardianship is no longer necessary.

SEC. 40. The Probate Judge may require a new bond to be given by any guardian whenever he shall deem it necessary, and may discharge the existing sureties from further liability, after due notice given, as such court may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

SEC. 41. Every bond given by a guardian shall be filed and preserved in the office of the Judge of the Probate Court of the county, and in case of the breach of any condition thereof, may be prosecuted in the name of the ward, for the use and benefit of such ward, or of any person interested in the estate.

SEC. 42. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within three years from the time when the guardian shall have been discharged, provided, that if, at the time of such discharge, the person entitled to bring such action shall be under any legal disability to sue, the action may be commenced at any time within three years after such disability be removed.

SEC. 43. Upon complaint made to the Probate Judge by any guardian, or by the ward, or by any creditor, or by any other person interested in the estate, or by any person having any

prospective interest therein, as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects, or any instrument in writing belonging to the ward, the Judge may cite and examine such suspected person, and proceed with him as to such charge in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

SEC. 44. When any minor or other person liable to be put under guardianship, according to the provisions of this act, shall reside without this Territory, and shall have any estate therein, any friend of such person, or any one interested in his estate in expectancy or otherwise, may apply to the Probate Judge of any county in which there may be any estate of such absent person, and, after notice given to all interested, in such manner as the Judge shall order, by publication or otherwise, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

SEC. 45. Every guardian appointed under the provisions of the preceding section shall have the same powers and perform the same duties with respect to any estate of the ward that shall be found within this Territory, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this act.

SEC. 46. Every such guardian shall give bond to the ward in the manner and with the like condition as hereinbefore provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and such effects as shall come to his hands in this Territory.

SEC. 47. The guardianship which shall be first lawfully granted of any person residing without this Territory shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the Probate Court of any other county.

SEC. 48. Every guardian shall be allowed the amount of his reasonable expenses, incurred in the execution of his trust, and he shall also have such compensation for his services as the court in which his accounts are settled shall deem to be just and reasonable.

SEC. 49. The court in its discretion, whenever the same shall appear necessary, may appoint more than one guardian, of any person subject to guardianship, who shall give bond and be governed and liable in all respects, as is provided respecting a sole guardian.

SEC. 50. When an account is rendered by two or more joint guardians, the Probate Judge may, in his discretion, allow the same upon oath of any of them.

SEC. 51. All sales of real estate of minor heirs made for the benefit of said minor heirs, in accordance with the provisions of this act, shall be for cash, or for part cash, and part deferred payments, not to exceed three years, bearing date from date of sale, as in the discretion of the Probate Judge may be most beneficial to said minor heirs. Guardians making the sales aforesaid shall demand and receive from the purchasers bond and mortgage on the real estate so sold, with such additional security as the Judge may deem necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

SEC. 52. All letters of guardianship hereafter issued, and all guardians' bonds hereafter executed, under the provisions of this act, with the affidavits and certificate thereon, shall be forthwith recorded by the Clerk of the Probate Court having jurisdiction of the persons and estates of said wards, respectively, in a book kept by him in his office for that purpose, and said records and duly certified copies thereof shall have the same force and effect in all cases whatsoever as the originals thereof would have.

SEC. 53. All matters which under the provisions of this act may be preferred by the Probate Judge, may be performed by him at chambers or as the act of the Probate Court when holding such court; and any order appointing a guardian shall be entered as, and become a decree of the court. The provisions of the act in relation to the estates of deceased persons, so far as they relate to the practice in the Probate Court, or the District Court, shall also apply to proceedings under this act where they do not conflict with any of the provisions of this act.

SEC. 54. This act shall take effect and be in force from and after its passage.

APPROVED February 3d, 1873.

AN ACT

To change the name of Arizona City.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That the name of Arizona City, the county seat of Yuma county, be, and is hereby changed to "Yuma," and shall be known as such from and after the passage of this act.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 3d, 1873.

AN ACT

To provide for obtaining the Statistics of the Territory.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. It shall be the duty of the County Assessors of the several counties of the Territory, at the time of making the annual assessment, to obtain the following information from each person assessed, to wit: The number of acres he or she has under cultivation; class of products; average yield per acre; expense of cultivation; average price received; number and kind of fruit trees and vines set out, and their yield; number of horses, cattle, hogs and sheep; proceeds of placer and quartz mines; number of mines patented; number of and class of machines for reducing ores, and average yield per ton; number of flouring mills, and amount of flour made; number of saw-mills and amount of lumber made; and a complete detail of all other mechanical or manufacturing operations. To obtain this information the Assessor shall be furnished with convenient blanks; and when completed he shall turn the same over to the County Recorder; and the County Recorder

shall make a complete copy of the same and forward it to the Territorial Auditor, on or before the first day of December of each year.

SEC. 2. It shall be the duty of the Territorial Auditor to cause to be printed convenient blanks for the use of the Assessors of the several counties, to conveniently obtain the information as provided in section one of this act; which blanks shall be forwarded to the said Assessors on or before the first day of April of each year; and he shall draw his warrant in payment for printing said blanks on the Territorial Treasurer, and the Treasurer shall pay the same out of any money in the treasury not otherwise appropriated. It shall be the duty of the Auditor to record the statistics of the Territory in a book prepared for that purpose, which shall be open to the use and inspection of any citizen of the Territory, and he shall make a full statement of the statistics of the Territory to each Legislature.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 5th, 1873.

AN ACT

To better enable the Board of Supervisors of Yuma County to erect County Buildings.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. The Board of Supervisors of the county of Yuma are hereby authorized and empowered to erect a court-house, jail and necessary county offices for said county, and to purchase a suitable lot of land upon which to erect such buildings, the amount of money to be expended under this act not to exceed the sum of ten thousand dollars.

SEC. 2. Within thirty days after the passage of this act, the Board of Supervisors of said county shall advertise in one or more newspapers published in this Territory, and shall also

post notices in three public places in the county of Yuma, for a period of thirty days, for plans and specifications for the erection of a court-house, to include court-rooms and such offices for county officers as such Board may deem necessary, and a county jail; such advertisement to specify generally the number, class and approximate dimensions of each of said buildings and offices. On the day named in the advertisement the said Board of Supervisors shall meet at the court-house in said county, and publicly open and consider all proposals, plans and specifications presented, and may adopt such plan and specification as to them seems most suitable to the purposes intended; and such Board may reject any and all plans presented. Upon the acceptance of any such plan and specification so presented, the said Board shall draw their warrant upon the general fund of the county, in favor of the person or persons whose plan and specification has been so accepted, for the sum of fifty dollars, upon condition that said plan and specification so accepted, be by the owner or owners thereof surrendered to the said Board as the property of said county.

SEC. 3. The said Board, within twenty days after the acceptance of a proposed plan and specification as hereinbefore provided for, shall advertise in one or more newspapers published in the Territory, and by posting notices in at least three public places in said county for a period of thirty days, for sealed proposals for the erection of the county buildings provided for in section one of this act, and in accordance with the plans and specifications adopted by said Board. Said advertisement shall specify the size, number of rooms, thickness of walls, kind and quality of material in the construction of said buildings, kind of roof and floor, the size of jail, thickness of walls, kind and quality of material to be used in the construction, the number and kind of cells, and the number and size of the doors and windows, and the time allowed for the completion of said buildings; also the time when and the manner in which payment will be made.

SEC. 4. The said Board shall, on the day named in such advertisements, meet at the court-house in said county and publicly open all bids offered, and may award such contract in the manner as in their discretion appears most conducive to the interest of the county, and they may reject any and all bids offered, and said Board shall require of the person or persons to whom such award may be made, to enter into a written contract with said Board for the erection and completion of said buildings, and shall require such person or persons entering into said contract to give bonds to said county in

double the amount of such contract, with two or more good and sufficient sureties, to be approved by the Probate Judge of said county.

SEC. 5. The expense for advertising for proposals to build the county buildings herein specified, shall be paid by the person or persons to whom the contract for such buildings shall be awarded, and no contract shall be awarded by said Board until such expense is paid, and all advertising required by this act not otherwise provided for shall be paid out of the general fund of said county as other county charges are paid.

SEC. 6. The Board of Supervisors of said county are hereby authorized and empowered to prepare and issue bonds of the county of Yuma, not to exceed in amount the sum of ten thousand dollars, on the faith and credit of the said county of Yuma, payable at the expiration of five years from the date of their issuance, which bonds shall bear interest at the rate of ten per cent per annum, which interest shall be payable annually on the first day of January of each year, at the office of the County Treasurer of Yuma county; *provided*, that such bonds may be redeemed within the said period of five years, at the option of said county; such bonds to be of the denomination of fifties, hundreds and five hundreds, the form and number of each denomination of such bonds to be determined by said Board of Supervisors, and each denomination of such bonds to be numbered consecutively, from one upward, and each bond shall be signed by the chairman of the Board and countersigned by the clerk of the Board, the amount of all of such bonds not to exceed the sum of ten thousand dollars, and to each bond so issued shall be attached the seal of the County Recorder of said county.

SEC. 7. Upon the payment by the County Treasurer of any interest upon any of the bonds so issued, he shall take from the person or persons to whom such interest is so paid, a receipt therefor, which said receipt shall specify, 1st. The number and denomination of the bond. 2d. The amount of accrued interest thereon. 3d. The amount of interest paid, which receipt shall be retained by such Treasurer as his voucher for the interest so paid, and he shall indorse upon the back of each bond upon which interest is paid the date when, and the amount of interest so paid.

SEC. 8. There shall be levied annually upon the taxable property in said county of Yuma a tax of fifty cents upon each one hundred dollars, such tax to be levied and collected in the

same manner as now provided by law for the assessment and collection of taxes within this Territory. The tax so collected shall by the Treasurer of said county be placed to a fund to be denominated "Yuma County Building Fund," and the moneys so appropriated shall be applied as designated by this act, and shall be used for no other purpose whatsoever.

SEC. 9. Whenever there shall have accumulated in said "Yuma County Building Fund" the sum of five hundred dollars in excess of the interest due and payable upon all outstanding bonds issued as provided by this act for the year in which such excess shall have accrued, the County Treasurer of said county shall advertise for bids for the surrender of bonds issued in pursuance of this act, which advertisement shall be for the period of twenty days in some newspaper printed in the county, if there be any, and by posting notices in at least three public places in the county; and such advertisements and notices shall specify a day on which said Treasurer will open bids for the surrender of any such bonds. All offers for the surrender of bonds shall be sealed proposals, and shall be indorsed "Proposals for the surrender of Yuma County Building Fund Bonds;" on the day named in such advertisement and notices, some one member of the Board of Supervisors and the County Treasurer shall, between the hours of two and four P. M. of that day, proceed to the office of the latter, and shall publicly open all proposals offered, and shall accept the lowest bids offered to the extent of the money in said fund applicable to the redemption of such bonds, and if two proposals are the same, and the lowest offered, the bond smallest in denomination shall be first paid, *provided*, that no offer shall be considered unless the bonds proposed to be surrendered shall accompany the proposal, and no bid shall be accepted for more than the par value of any such bonds. Upon the acceptance of any proposals offered, the Treasurer shall pay to the person or persons whose bids have been accepted, out of the said "Yuma County Building Fund," the money for which such bond or bonds were offered, and shall indorse across the face of the same, the word "canceled," and upon the back of every such bond so canceled, he shall indorse the day and year the same was paid, the person or persons to whom paid, the rate at which the same was paid and the whole amount paid on account of such bond, and the said Treasurer shall file the same in his office as his voucher for the sums of money paid by him on account of said Fund. If, when money has so accumulated in said Fund and notice thereof given as in this section provided, no bids are offered for the surrender of any of such bonds, the County Treasurer shall set apart such money and advertise for the

same period, and in the same manner, as for the surrender of bonds, which advertisement shall specify the sum of money then in his hands applicable to the payment of bonds issued by authority of this act, and shall in such notice call for the surrender of bonds equal to the money in his hands with the interest due thereon, which bonds so called for surrender shall be those first in issue. Said Treasurer shall further state in such notice, the number and denomination of the outstanding bond or bonds he is ready to cancel, and the person or persons to whom issued, and interest for such bond or bonds shall cease after ten days from the last day of publication of such notice.

SEC. 10. The person or persons to whom the contract shall be awarded for the construction of the County Buildings provided for in this act, shall be entitled to receive upon the completion, and acceptance by the Board of Supervisors of said county, of the foundation of such buildings, bonds to the amount of fifteen hundred dollars, and upon the completion and acceptance of the walls of such buildings, the sum of two thousand dollars, and upon the completion and acceptance of such buildings by the said Board of Supervisors, the balance of the contract price due for the same.

SEC. 11. The County Treasurer, upon receiving such bonds from the Clerk of the Board of Supervisors, shall hold the same subject to the order of the Board. Upon receiving an order from the Board of Supervisors, for that purpose the Treasurer shall issue to the person or persons in any such order named, the amount of bonds thereon specified, filling in number and date of such bonds, and shall at the time of such issue enter in a book to be kept for that purpose, the date of such issue, the number and denomination of the bonds so issued, and the person or persons to whom issued, and all such bonds shall bear interest from the date of their issue.

SEC. 12. When at any time there shall be in the hands of the County Treasurer, to the credit of said "Yuma County Building Fund" a sum sufficient to liquidate all outstanding bonds with the accrued interest thereon, the said Treasurer shall advertise for the surrender of all such bonds, in one or more newspapers published in the Territory, and by posting notices in at least three public places in the county of Yuma, for a period of thirty days; such advertisement and notices shall specify that there is in the hands of said Treasurer sufficient money to pay all outstanding bonds and interest accrued in pursuance of this act, and that unless presented for payment before a date named in such advertisement and notices, which

date shall not be more than ten days subsequent to the expiration of said notices, the interest on all bonds so outstanding shall cease.

SEC. 13. The Board of Supervisors may purchase a lot of land suitable for the purpose, upon which to erect the County Buildings provided for by this act, and shall pay for the same, in the bonds herein provided to be issued; *provided* the sum paid for any such lot shall not exceed one thousand dollars of such bonds at par value.

SEC. 14. This act shall take effect and be in force from and after its passage.

APPROVED February 5th, 1873.

AN ACT

To Divorce Mary Jane Mansperger from her husband,
Samuel S. Mansperger.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. The marriage heretofore contracted and now existing between Mary Jane Mansperger and Samuel S. Mansperger, her husband, be and the same is hereby dissolved, and the said Mary Jane Mansperger is absolutely and entirely freed from all the obligations and duties thereof.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 5th, 1873.

AN ACT

Prescribing the duties of the Boards of Supervisors in the several Counties of this Territory.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. There shall be in each of the counties of this Territory a Board of Supervisors, to consist of three members, who shall be elected in the same manner as other county officers, and to possess such qualifications and have such powers as are hereinafter given.

SEC. 2. Said Supervisors shall be qualified electors of their respective counties, and shall be elected at a general election; they shall enter upon their duties on the first day of January subsequent to their election. One member of such Board to hold office for the period of four years, and two members to hold office for the period of two years, or until their successors are elected and qualified, and no county or township officer shall be eligible to the office of Supervisor. The Supervisors now in office in each county of the Territory shall, at their regular meeting in April, A. D. 1873, decide by lot their respective terms of office, one holding for the term of four years, and two holding for the term of two years, the term of office of each commencing on the first day of January, A. D. 1873, and hereafter, at each general election, two Supervisors shall be elected, who shall hold their office, one for the term of four years, and one for the term of two years; the two Supervisors having the shortest term to serve shall decide by lot which one of them shall be Chairman of the Board. The two members of the Board hereafter elected at each general election shall, at the first general meeting of the Board after their qualification as such Supervisors, decide by lot which of the two shall hold for four years, and which for two years, and the member holding over shall be Chairman of the Board, and the County Recorder shall be Clerk of the Board.

SEC. 3. The regular meeting of the Board of Supervisors shall be held at the county-seat of their respective counties, on the first Monday of January, April, July and October of each year, and shall continue without final adjournment, until all the business before them is disposed of. The Board shall also

meet on the second Monday after each general election, to canvass election returns.

SEC. 4. If, at any time after the final adjournment of a regular meeting, the business of the county shall require a meeting of the Board, a special meeting of the same may be called by a majority of the Board; the call shall be entered on the records of the Board, and the Clerk shall give at least three days' notice of such special meeting, to any member of the Board not joining in the call; the call shall specify the business to be performed, and no other shall be transacted at such special meeting.

SEC. 5. A majority of the Board shall form a quorum for the transaction of business, and all sessions of the Board shall be public. The Clerk shall keep a full and complete record of all the proceedings of the Board, and all their proceedings shall be entered upon the records, and the vote of each member on every question, where there is a division, shall be entered upon the record; the record of the proceedings shall be signed by the Chairman and Clerk of the Board.

SEC. 6. The County Recorders of the several counties in this Territory shall receive the following annual salary, to be paid quarterly, out of the general fund of the county, for their services, as clerks of the Board of Supervisors of their county, to wit: The County Recorder of Pima county, four hundred dollars; the County Recorder of Yavapai county, the sum of four hundred dollars; the County Recorder of Yuma county, the sum of four hundred dollars; the County Recorder of Maricopa county, the sum of four hundred dollars; the County Recorder of Mohave county, the sum of four hundred dollars; and no other fees or compensation shall be allowed for any services connected with the services rendered as such Clerk of the Board of Supervisors.

SEC. 7. The records, books and accounts of the Board shall be kept at the office of the County Recorder of each county, and in his care, and shall, at all times, be open to public inspection, free of charge.

SEC. 8. The Board of Supervisors shall have power and jurisdiction in their respective counties:

1. To make orders respecting the property of the county in conformity with any law of this Territory, and to take care of and preserve such property.

2. To examine, settle and allow all accounts legally chargeable against the county, and to levy for the purposes prescribed

by law, such amount of taxes on the assessed value of real and personal property in the county as may be authorized by law.

3. To examine and audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county, or appropriated by law or otherwise for its use and benefit.

4. To lay out, construct and manage public roads, turnpikes, ferries and bridges within the county, in all cases where the law does not otherwise provide, and to make such orders as may be necessary and requisite to carry their control and management into effect.

5. To take care of and provide for the indigent sick of the county, and to procure suitable medical attendance for such indigent sick.

6. To divide the county into townships, and to change the divisions of the same, and to create new townships, as the convenience of the county may require.

7. To establish and change election precincts, and to appoint inspectors and judges of election.

8. To control and manage the property, real and personal, of the county, and to receive any property donated for the use and benefit of the county.

9. To lease, or purchase any real or personal property necessary for the use of the county; *provided*, no purchase of real property shall be made, unless the value of the same be previously estimated by three disinterested persons, to be appointed by the Probate Judge.

10. To sell at public auction, after at least thirty days' public notice previous to such sale, any property belonging to the county, and cause the same to be conveyed, applying the proceeds of such sale to the use of the county.

11. To cause to be erected and furnished a court-house, jail and such other public buildings as may be necessary for county purposes, and to keep the same in repair; *provided*, that the contract for building any public buildings be let out, after at least thirty days' previous public notice, in each case, of a readiness to receive proposals therefor to the lowest responsible bidder, who will give sufficient security for the performance of any contract awarded to him, and such Board may reserve the right to reject any and all bids.

12. To control the prosecution or defense of all suits to which the county is a party.

13. To extend by resolution the time fixed by law, in which the Sheriff, as Tax Collector, shall make his return to the County Treasurer; but such extension shall in no instance exceed thirty days beyond the time fixed by general law for such return.

14. To establish such rules and regulations in reference to the management of the interests and business concerns of the county, and in reference to the mode of proceedings before such Board, as they shall deem necessary and proper, in all matters not otherwise specially provided for by law.

15. To provide suitable safes and vaults for the depository of the moneys, books, records and papers of the several county officers.

16. To fill, by appointment, all vacancies in township and county officers, unless otherwise provided by law.

17. To do and perform all such other acts and things as may be necessary to the full discharge of the powers and jurisdiction conferred on the Board.

SEC. 9. The books, records and accounts of the Board of Supervisors shall be deposited with the County Recorder, and shall be open without charge to the examination of any person. It shall be the duty of the Clerk to designate upon every account, upon which any sum shall be audited and allowed by the Board, the amount so audited and allowed, and the charges for which the same was allowed.

SEC. 10. If, upon any settlement with the Treasurer, or upon any examination of the accounts and affairs of his office, or at any other time, the Board of Supervisors of any county shall find that such Treasurer has lost, used, misapplied or converted to his own use, any of the public moneys, papers, or vouchers which shall have come into his possession as such Treasurer, and they shall be of opinion that the public interest requires it, they shall immediately enter into and take possession of all the moneys, books, papers, vouchers, effects and property pertaining to said office of Treasurer, and make a true statement and inventory thereof, which statement and inventory shall be filed with the Clerk of said Board, and entered at large upon their records. They shall then, by order entered upon their records, suspend such Treasurer, and appoint some suitable person to fill the office of Treasurer until the charges against the Treasurer so suspended shall be determined; and the person so appointed Treasurer shall give the bond and take the oath of office in the same manner, and within the time required by law of persons appointed to the office of Treasurer. Immediately upon the suspension of a Treasurer from office, the Board of Supervisors shall notify the District Attorney of the county of their action in the premises, and it shall be his duty to institute proceedings, as soon as practicable, in such court or before such officer as may have jurisdiction of the matter for the removal of such Treasurer so suspended from office. If, upon a final hearing before a court or officer having jurisdiction

of the subject-matter, such Treasurer be exonerated, and be not removed from his office of Treasurer, the court or officer before whom the cause is heard shall by order restore such Treasurer to his said office, and he shall be allowed, as taxable costs against the county, the amount of fees and perquisites received by his successor in office during his suspension, together with his costs and disbursements necessarily expended in the defense of such proceeding, which costs and fees shall be a county charge, and he may again, forthwith, enter upon the discharge of the duties of his office as Treasurer, and the person so appointed during his suspension shall at once turn over to such Treasurer all the moneys, books and property of said office in his hands and take receipts therefor.

SEC. 11. Upon the death or absconding of any County Treasurer, the said Board shall take the same proceedings in regard to the moneys and effects of his office, and the statement and inventory thereof as is provided in the next preceding section, and shall retain the same until a successor of such Treasurer is elected or appointed, and upon the qualifying of such Treasurer, said moneys, books and effects shall be turned over to him.

SEC. 12. The Board of Supervisors shall cause to be prepared within the jail of their respective counties so many cells for the confinement of convicts as may be deemed necessary.

SEC. 13. The said Board of Supervisors shall have power to establish, by name or number, election precincts within their respective counties, whenever, 1st. A territory shall contain twenty or more legal voters, living in proximity to each other, and at a distance of more than six miles from any other precinct established by law. 2d. When application shall be made to such Board by eight or more of such legal voters to have such election precinct established.

SEC. 14. Whenever the requirements of the preceding section shall have been complied with, the Board may grant the application and establish such election precinct.

SEC. 15. Every precinct thus established shall remain, until altered or discontinued by said Board, and at each general election held therein, after such precinct shall be established, the qualified electors thereof may elect one justice of the peace and one constable for such precinct.

SEC. 16. No election precinct shall be considered a body politic and corporate for any purpose whatever, nor shall they have, or exercise any powers, except such as are expressly given by law.

SEC. 17. The Board of Supervisors may require any officer whose salary or compensation is paid by the county, to make report under oath to them on any subject or matter connected with the duties of his office, and may require such officers to give such bonds, or further additional bonds, as shall be reasonable or necessary for the faithful performance of their respective duties; and any such officer, who shall neglect or refuse to make such report, or to give such bond within ten days after being so required, may be removed from office by such Board, and the office declared vacant, and such Board may fill such vacancy for the unexpired portion of the time for which such officer was elected or appointed; *provided*, that the provisions of this section shall not apply to the office of Probate Judge.

SEC. 18. Whenever any member of said Board of Supervisors is pecuniarily interested in any question before them, the Probate Judge shall act as a member of such Board, and for such purpose shall possess all the powers, and be subject to all the liabilities, of any member of said Board.

SEC. 19. The Board of Supervisors shall act as a Board of Equalization in their respective counties.

SEC. 20. The Board of Supervisors shall also act as a Board of Canvassers, and declare the election returns, and cause a certificate of election to be given by the clerk to any person whom they shall find to have been legally elected to any county, township or precinct office within the county; *provided*, that the Probate Judge shall canvass the election returns as to Supervisors, and shall cause the clerk to give to each person elected to the office of Supervisor a certificate of election.

SEC. 21. The said Board may authorize the sheriff of the proper county to offer a reward, not exceeding five hundred dollars in any one case, for the apprehension of any person convicted of, or charged with the commission of a crime, and who is at large.

SEC. 22. All expenses incurred by any of said Boards, under the provisions of this act, shall be chargeable to the proper

county, and shall be audited and paid the same as other claims against the county.

SEC. 23. All vacancies in county and township offices, except that of Probate Judge, shall be filled by appointment of some suitable person to fill such office by the Board of Supervisors, such persons so appointed to hold office until the next succeeding election, or until their successors are elected and qualified.

SEC. 24. A copy of any proceedings required by law to be filed, or recorded by the clerk of said Board of Supervisors, duly certified by such clerk, shall be deemed and taken to be *prima facie* evidence of the contents thereof, in all courts and places within this Territory.

SEC. 25. Each member of said Board shall be allowed a compensation of five dollars per day for his services, while in actual attendance at the sittings of said Board upon the business of the county; and twenty cents per mile for each mile traveled in going to and returning from the place of such meeting, to be audited and paid by the county; *provided*, the total per diem of each Supervisor shall not exceed the sum of two hundred and twenty-five dollars for any one year, and that no mileage shall be allowed or paid except for traveling to and from regularly quarterly meetings of the Board.

SEC. 26. The said Board of Supervisors shall not audit and allow their own accounts, but the same shall be audited and allowed by the Probate Judge of their respective counties.

SEC. 27. Nothing herein contained shall abridge the powers or duties of any Board of Supervisors or any member thereof, which they may possess under any other law of this Territory, and not provided for in this act.

SEC. 28. All persons elected to the office of Supervisor of any county of this Territory shall take the oath of office within ten days before their term of office shall commence, and any person appointed to such office shall take such oath within ten days after they receive notice of their appointment.

SEC. 29. Chapter nine of the Howell Code, entitled, "of the local administration of counties," and "an act creating a Board of Supervisors in the several counties of the Territory," approved December 30, 1865, and "an act to amend section six of an act entitled an act creating a Board of Supervisors in the

several counties of the Territory," approved February 18, 1871, are hereby repealed.

SEC. 30. This act shall be in force from and after its passage.

APPROVED February 7th, 1873.

AN ACT

To amend chapter eleven, Howell Code of Proceedings in Criminal Cases.

Be it enacted by the Legislative Assembly of the Territory of Arizona.

SECTION 1. Section one hundred and seventy of said chapter is hereby amended so as to read as follows :

§ 170. The following oath shall be administered to the foreman of the Grand Jury : You, as foreman of this Grand Jury, do solemnly swear that you will diligently inquire into, and true presentment make of all public offenses against this Territory committed, or triable in the county of which you have or can obtain legal evidence. You shall present no person through malice, hatred or ill will, nor leave any unrepresented through fear, favor or affection, or for any reward, or the promise, or the hope thereof ; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God.

SEC. 2. Section one hundred and seventy-five of said chapter is hereby amended so as to read as follows :

§ 175. The court may, in its discretion, at any time during a term thereof, direct an order to be entered, that the sheriff summons a Grand Jury, though one or more Grand Juries have been organized and discharged during the term.

SEC. 3. This act shall be in force and take effect immediately.

APPROVED February 7th, 1873.

AN ACT

Changing the name of Genoveva Van Haren to Genevieve Van Haren Oury.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the name of Genoveva Van Haren, infant daughter of Peter Van Haren, be and it is hereby changed to that of Genevieve Van Haren Oury.

SEC. 2. That it shall be lawful for Granville H. Oury to adopt the said Genoveva Van Haren Oury, mentioned in the first section of this act, and make her, the said Genevieve Van Haren Oury, his heir at law, and to that end the said Granville H. Oury shall, within forty days after the passage of this act, file in the office of the Probate Judge of Maricopa county his statement, in writing, declaratory of his intention to adopt the said Genevieve Van Haren Oury, under the provisions of this act, and an acknowledgment of the said Genevieve Van Haren Oury as his heir at law and legal representative, which declaratory statement and acknowledgment shall be made a permanent record, and the said Genevieve Van Haren Oury, from that time hence, shall be the lawful heir and legal representative in all respects as though born to him.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 7th, 1873.

AN ACT

To change the name of William Henry McDonough to Sidney Willis Carpenter.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the name of William Henry McDonough be and it is hereby changed to that of Sidney Willis Carpenter.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 7th, 1873.

AN ACT

Relating to District Courts.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. On the first day of the regular term of the District Court, in the several counties in this Territory, if the presiding Judge be not present, the Sheriff, if he have a written order to that effect from said Judge, shall open and adjourn the Court to such day as such order may direct, not exceeding two weeks from the first day of such term; if the Sheriff have no such written order he shall, in case of the absence of such Judge, open and adjourn the Court from day to day for one week, unless the judge arrive before that time has expired. Such order, if any be made, shall be entered upon the minutes of the Court, and the Clerk shall attend with the Sheriff, and enter also upon his minutes a memorandum of the opening and adjournment herein provided for.

SEC. 2. This act shall take effect immediately.

APPROVED February 7th, 1873.

AN ACT

Amendatory of "chapter eleven, Howell Code," entitled "Of Proceedings in Criminal Cases."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That sections two hundred and eighty-five, two hundred and eighty-six, two hundred and eighty-seven, chapter eleven of the Howell Code, entitled "Of Proceedings in Criminal Cases," be amended to read as follows:

§ 285. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending;

First. On the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending:

Second. On the application of the Attorney prosecuting any such action, on the ground that no jury can be had for the trial of such defendant in the county where the indictment is pending.

§ 286. The application must be made in open court, and in writing, verified by the affidavit of the defendant or Attorney prosecuting, as the case may be, and a copy of the affidavit must be served upon the Attorney prosecuting, or upon the Attorney defending such case, at least one day before the application is made to the court.

§ 287. If the court be satisfied that the representation of the party making the application is true, an order shall be made for the removal of the action to the proper court of the county, which is free from the like objection.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 7th, 1873.

AN ACT

To amend an act entitled "An act to provide Revenue for the Territory of Arizona, and the several counties thereof," approved February 18, 1871.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That section forty-five (45) of an act entitled "An act to provide Revenue for the Territory of Arizona, and the several counties thereof," approved February 18, 1871, be amended to read as follows :

§ 45. Each male inhabitant of this Territory, over the age of twenty-one and under sixty years, and not exempt from poll-tax shall, between the first Monday of January, and the first Monday of October in each year, pay a poll-tax for the use of the Territory and county of three dollars; fifty per cent of the net proceeds of which shall be paid into the County Treasury for county purposes, the remaining fifty per cent of the net proceeds to be paid into the County Treasury for the use of the Territory. The collection of such poll-tax shall be enforced by the County Collector, whether the name of such inhabitant be on his tax-roll or not, and the Collector shall receive one dollar for each six dollars of poll-tax by him lawfully collected in each year.

SEC. 2. That section forty-six (46) of said act be amended so as to read as follows :

§ 46. The County Treasurer shall, on or before the first Monday of January in each year, cause proper blank receipts for the poll-tax of citizens, provided for in this act, to be printed of a uniform appearance, changing the style thereof each year, and sign a number of them equal to the probable number of inhabitants in his county liable to pay poll-tax, and shall number them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose, and thereupon deliver them to the Clerk of the Board of Supervisors, who shall in turn likewise sign them and make an entry thereof in a book to be kept by him for that purpose.

SEC. 3. That section forty-nine (49) of said act be so amended as to read as follows :

§ 49. Upon receiving such receipts from the Clerk of the Board of Supervisors, the tax collector shall give a receipt to

said Clerk of the Board of Supervisors for the same, and the said Clerk of the Board of Supervisors shall immediately charge the same to the tax collector so receiving them. All receipts delivered to the tax collector shall be filled out with the sum of three dollars, and three dollars shall be charged to him for each one so delivered.

SEC. 4. That section fifty-five (55) of said act be amended to read as follows:

§ 55. On the first Monday of each month the tax collector shall make oath before the Clerk of the Board of Supervisors of the total number of poll-taxes collected by him during the last preceding month, and shall, at the same time, file the County Treasurer's receipt for the total amount of poll taxes collected, less the amount allowed by this act for fees, and on the first Monday in November he shall return all poll-tax receipts by him received and not used, and shall pay to the County Treasurer the total amount collected and not paid in theretofore, subject to the deduction of his fees for collection as hereinbefore provided, and on the Saturday next preceding the first Monday in December of each year, the tax collector and the Treasurer shall attend at the office of the Board of Supervisors, and the Board of Supervisors shall then and there finally settle with the tax collector for all poll-tax receipts signed by the Treasurer and delivered to him, and the tax collector shall then pay over the amount of all poll-tax receipts received by him and not then or theretofore returned, and all the poll-tax receipts returned by the tax collector shall be forthwith transmitted by the Clerk of the Board of Supervisors with the annual statement to the Territorial Auditor.

The County Collector shall preserve the stubbs of the poll-tax receipts which he shall issue, and, on the first Monday in each month, he shall deliver to the Clerk of the Board of Supervisors the stubbs of the receipts given by him during the month next preceding, and the Clerk of the Board of Supervisors shall forthwith file the said stubbs in his office, and in a book to be called the Register of poll-taxes, to be furnished him for that purpose by the Board of Supervisors, he shall enter each month, in alphabetical order, the names of the persons who have paid their poll-taxes during the preceding month, as shall appear from the stubbs on file in his office, as aforesaid, and any person whose name shall not be found in the said register of poll-taxes, shall be, *prima facie*, deemed not to have paid his poll-tax.

SEC. 5. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

APPROVED February 10th, 1873.

AN ACT

To authorize the Town Corporation of Yuma to levy a special tax for the purpose of constructing a *levee* on the Gila and Colorado rivers.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the Town Corporation of Yuma be and is hereby authorized and empowered to levy and collect annually a special tax of fifty cents on each one hundred dollars of the taxable property within the corporate limits of said town, as shown by the Assessors' roll, for the purpose of constructing a *levee* upon the Gila and Colorado rivers.

SEC. 2. The tax, when collected, as provided in section one, shall be paid to the Town Treasurer, who shall place the same in a separate fund, and be used solely for the construction of said *levee*.

SEC. 3. Whenever it becomes necessary in the construction of said *levee* to enter upon the property of private individuals, the Town Corporation shall be governed in making such entry, by the provisions of sections twenty-two and twenty-seven of chapter fifty-two of the Howell Code, entitled "of the incorporation of villages," and the provisions of said sections are hereby extended to this act.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED February 10th, 1873.

AN ACT

To amend section one of an act entitled "An act fixing the Commencement, Terms, Time and Expiration of the office of certain Territorial and County officers," approved February 18, 1871, and to legalize the acts of Notaries Public and Commissioners of Deeds.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. Section one of an act entitled "An act fixing the commencement, terms, time and expiration of certain Territorial and county officers," is hereby amended so as to read as follows :

§ 1. The term of all officers elected or appointed in this Territory, except the members of the Board of Supervisors, Notaries Public and Commissioners of Deeds, shall expire on the 31st day of December, A. D. 1872, and every two years thereafter ; and all officers elected or appointed for a full term, except the members of the Board of Supervisors, Notaries Public and Commissioners of Deeds, shall commence their term of office on the first day of January next, after the term of their predecessors shall have expired ; and all officers elected or appointed to fill any vacancy, except Notaries Public and Commissioners of Deeds, shall hold such office only until the expiration of the regular term, which the person whose vacancy is so filled would have held the same.

SEC. 2. The official acts of Notaries Public and Commissioners of Deeds, since December 31, 1872, who were appointed prior to that time, and who were legally in office at that time, are hereby legalized and made valid, the same as though their said terms of office had not expired.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 11th, 1873.

AN ACT

To encourage the sinking of Artesian Wells.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Any person or persons who shall be first in obtaining a flowing stream of water, by means of an Artesian well, at any point in Arizona Territory, not less than ten miles distant from any stream of living water, shall receive as a reward for the same the sum of fifteen hundred dollars, to be paid as hereinafter provided.

SEC. 2. When such person or persons shall obtain flowing water by means of an Artesian well, as provided in section one of this act, proof of the same shall be made to the Territorial Auditor, and when satisfactory to him that flowing water has been obtained, as provided in this act, he shall draw his warrant on the Territorial Treasurer in favor of the person or persons so obtaining flowing water, for the sum of fifteen hundred dollars, and the Treasurer shall pay the same out of any money in the treasury not otherwise appropriated.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 12th, 1873.

AN ACT

Amendatory of chapter thirty-seven of the Howell Code, entitled "Of Exemptions of Real Estate."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That section one of chapter thirty-seven of the Howell Code, entitled "Of Exemptions of Real Estate," be amended so as to read as follows:

§ 1. The homestead, consisting of a quantity of land, together with the dwelling-house thereon and its appurtenances and the water rights and privileges pertaining thereto, sufficient to irrigate the land, not exceeding in value the sum of five thousand dollars, to be selected by the owner thereof, shall not be subject to forced sale or execution, or any other final process from a court, for any debt or liability contracted or incurred after thirty days from the passage of this act, or if contracted or incurred at any time in any other place than in this Territory.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 12th, 1873.

AN ACT

To amend section four hundred and seventy-five of chapter eleven of the Howell Code, entitled "Of Proceedings in Criminal Cases."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That section four hundred and seventy-five of chapter eleven of the Howell Code, entitled "Of Proceedings in Criminal Cases," be and the same is hereby amended so as to read as follows:

§ 475. After the certificate of judgment has been remitted, as hereinbefore provided, the appellate court shall have no further jurisdiction of the appeal or the proceedings thereon; and all orders which may be necessary to carry the judgment into effect shall be made by the court, or the judge thereof, to which the certificate is remitted, as the appellate court may direct.

SEC. 2. This act shall take effect immediately.

APPROVED February 12th, 1873.

AN ACT

To authorize the appointment of a Territorial Commissioner to the International Exposition at Vienna.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the Governor of the Territory of Arizona be and he is hereby authorized to appoint a Commissioner to represent the Territory of Arizona at the International Exposition to be held at Vienna during the year eighteen hundred and seventy-three; such Commissioner to act without compensation for his service, and have no authority to impose any liability on the Territory by virtue of his appointment.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 12th, 1873.

AN ACT

Concerning Proceedings in Justices' Courts.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. When an action or proceeding is commenced in the Court of any Justice of the Peace of this Territory, and the person upon whom service of summons is to be made is a non-resident of the Territory, or is absent therefrom, or after due diligence cannot be found, or who conceals himself to avoid service of summons, and the fact shall appear by affidavit by or on behalf of plaintiff to the satisfaction of the justice, and it shall in like manner appear that a cause of action exists in favor of the plaintiff against the person upon whom service is to be made, the justice shall grant an order that the service

be made by the publication of the summons; the order shall direct the publication to be made in some newspaper to be designated as most likely to give notice to the defendant or person to be served, and for such time as may be deemed reasonable, once a week for at least four weeks; the justice shall issue a new summons, returnable in not less than sixty nor more than seventy days from the date thereof; the justice shall also direct a copy of the summons to be deposited in the post-office, directed to the person to be served at his place of residence, if the same be known or can be ascertained.

SEC. 2. Upon the return day of the summons, after proof of publication as above provided for, and proof that a copy of the summons has been deposited in the post-office, directed to the person to be served at his place of residence, or that his place of residence is unknown and could not be ascertained, the justice shall proceed with the case, and have the same jurisdiction, as if the summons had been personally served, *provided* in all cases that proof of personal service had out of the Territory shall be equivalent to publication and deposit in the post-office.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To amend an act entitled "An act to establish Public Schools in the Territory of Arizona," approved February 18, 1871.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Section one of said act is hereby amended so as to read as follows:

§ 1. A tax of twenty-five cents upon each one hundred dollars value of taxable property is hereby levied, and directed to be collected and paid into the Territorial Treasury as a special fund for school purposes, to be disbursed as hereinafter provided; said tax to be levied and collected at the same time and in the same manner as other Territorial revenues.

SEC. 2. Section two of said act is hereby amended so as to read as follows:

§ 2. The Board of Supervisors of each county shall annually, at the time of levying other taxes, levy a county school tax of twenty-five cents on each one hundred dollars valuation of taxable property, which tax shall be added to the county tax and collected in the same manner, and paid into the County Treasury as a special fund to be drawn as hereinafter provided.

SEC. 3. Section six of said act is hereby amended so as to read as follows:

§ 6. It shall be the duty of the Superintendent of Public Instruction, subject to the supervision of the Territorial Board of Education, to apportion to the several counties, on the first day of March and the first day of September of each year, the amount of money to the credit of the school fund to which each county shall be entitled under the provisions of this act, in proportion to the number of children, between the age of six and twenty-one years, in each of said counties.

SEC. 4. Section eight of said act is hereby amended so as to read as follows:

§ 8. The Superintendent of Public Instruction shall prescribe suitable forms and regulations for making all reports for conducting all necessary proceedings under this act, and shall cause the same, with such instructions as he may deem necessary and proper for the organization and government of schools, to be transmitted to the local officers, who shall be governed in accordance therewith.

He shall prepare a convenient form of school register for the purpose of securing more accurate returns from teachers of public schools, and shall furnish each County Superintendent with a number sufficient to supply at least one copy thereof to each district or school of such county.

He shall certify the cost for printing said blanks to the Territorial Auditor, who shall draw his warrant on the Territorial Treasurer in favor of the person to whom said amount is due, and the Treasurer shall pay said warrant out of any money in the Treasury not otherwise appropriated.

SEC. 5. Section nine of said act is hereby amended so as to read as follows:

§ 9. It shall be the duty of the Superintendent of Public Instruction to visit each county in the Territory once in each year, for the purpose of visiting schools, of consulting County Superintendents, of lecturing and addressing public assemblages on subjects pertaining to public schools.

SEC. 6. Section ten of said act is hereby repealed.

SEC. 7. Section fifteen of said act is hereby amended so as to read as follows:

§ 15. The Probate Judge of each county in this Territory is hereby made *ex officio* County Superintendent of public schools for his county, and shall be paid quarterly out of the school fund of said county the sum of one hundred dollars per annum, to be paid by the County Treasurer quarterly upon the receipt of the Superintendent.

SEC. 8. Section sixteen is hereby amended so as to read as follows:

§ 16. It shall be the duty of the County Superintendent of public schools, upon receiving notice from the County Treasurer, as provided in this act, to apportion the public school moneys in the county treasury among the several school districts in his county, in proportion to the number of children between the ages of six and twenty-one years, as returned by the School Trustees and School Census Marshals, and to forthwith notify the County Treasurer and School Trustees, in writing, of such apportionment. He shall have power and it shall be his duty to draw his warrant on the County Treasurer, in favor of and to deliver the same to the person entitled to receive the same, *provided* no such warrant shall be drawn in favor of any school district until full and correct returns have been made to him by the same as required by law, and a certificate of the Board of Trustees given, showing for what purpose, in accordance with this act, the money is required; and *provided further*, that no such warrant shall be drawn in favor of any school district, unless there is cash in the treasury at the time to the credit of said school district.

SEC. 9. Section thirty-one is hereby amended so as to read as follows:

§ 31. The Superintendents of Public Schools of the several counties shall have the power, and it is hereby made their duty, to prescribe and cause to be adopted a uniform series of text-books in the principal studies pursued in the public schools in their respective counties, to wit: Spelling, reading, grammar, arithmetic, geography, physiology, and such other studies as may be deemed necessary.

SEC. 10. Section thirty-three is hereby amended so as to read as follows:

§ 33. The public school year shall commence on the first day of September and end on the last day of August, and five

days shall constitute a legal school week, and twenty-eight days a legal school month. No public school shall receive any moneys, benefits or immunities, under the provisions of this act, unless such school shall have been instructed by a teacher or teachers duly examined, approved and employed by legal authority as herein provided.

SEC. 11. That sections eleven, twelve and thirteen, of chapter twenty-three, of Howell Code "of Education," also an act, "Concerning Common Schools," approved October 5, 1867. Also an act, entitled an act to establish public schools in the Territory of Arizona, approved December 16, 1868, be and the same are hereby repealed.

SEC. 12. All the powers and duties of the Superintendent of Public Instruction are hereby conferred upon the Governor of the Territory, who shall perform the same without compensation.

SEC. 13. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To amend section two hundred and nineteen of chapter forty-eight of the Howell Code "Of Proceedings in Civil Cases."

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That section two hundred and nineteen of chapter forty-eight of the Howell Code "Of Proceedings in Civil Cases," be and the same is hereby amended so as to read as follows:

§ 219. All goods, chattels, moneys, real property, personal and other property, or any legal or equitable interest therein, of the judgment debtor, whether the legal title thereof be in his name or otherwise, not exempt by law from sale or execution, and all property and rights of property that may be seized and held under attachment, shall be liable to be seized and sold on

execution. Shares and interests in any corporation, company, or association, or any legal or equitable interest therein, or the debts, claims or other property thereof, may be levied on and sold on execution, and the purchaser of any of said property shall be invested with all of the legal and equitable interest of such judgment debtor, and may bring suit to quiet his title thereto; or to perfect his title and interest therein, or to get possession thereof. Until a levy is made, property shall not be affected by execution.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To amend section four hundred and thirty-one of chapter eleven of the Howell Code, entitled "Of Proceedings in Criminal Cases."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That section four hundred and thirty-one of said chapter be and the same is hereby amended by adding to the seventh subdivision of said section the words, "and the written charges of the court to the jury, if there be any."

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To amend section one of an act "To Provide Revenue for the Territory of Arizona, and the several counties thereof," approved February 18, 1871.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That section one of an act to provide Revenue for the Territory of Arizona, and the several counties thereof, approved February 18, 1871, be so amended as to read as follows:

§ 1. The annual *ad valorem* tax of twenty-five cents upon each one hundred dollars' value of taxable property is hereby levied, and directed to be collected and paid for Territorial purposes upon the assessed value of all property in this Territory not by this act exempted from taxation; and upon the same property the Board of Supervisors of each county is also hereby authorized and empowered to levy and collect for county purposes such additional and special taxes, not exceeding two dollars upon each one hundred dollars' value of taxable property as the laws of this Territory may authorize or require them to levy and collect."

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To authorize the Publication of Information of the Resources of the Territory of Arizona.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That A. P. K. Safford is hereby constituted and appointed a Commissioner to prepare and cause to be published reliable information upon the pastoral, mineral, agricultural and other resources of the Territory, also the cost and facilities of coming to the Territory by the different railroads, stage routes and emigrant roads, and such other information as he

may consider of value to persons desiring to emigrate to this Territory.

SEC. 2. It shall be the duty of said Commissioner to prepare the information aforesaid by January 1, 1874, and he is hereby authorized to contract for the publication of three thousand copies in pamphlet form upon such reasonable terms as he may deem just and right; *provided*, that the total expense for publishing and distributing them shall not exceed three hundred dollars.

SEC. 3. Upon the completion of said publication to the satisfaction of the Commissioner, he shall certify to the Territorial Auditor the amount due for said work, and to whom, and the Territorial Auditor shall draw his warrant for the amount in favor of the person to whom the same is due, as shall appear by the certificate of said Commissioner, and the Territorial Treasurer is hereby authorized and directed to pay said warrant out of any money in the treasury not otherwise appropriated.

SEC. 4. It shall be the duty of the Commissioner to distribute said pamphlets in such a manner as will give them the widest and most useful circulation, and that twenty copies shall be furnished to each member of the Legislative Assembly.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To amend section fourteen, chapter thirty-five of Howell Code, "Of Limitations of Actions."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That section fourteen, chapter thirty-five of Howell Code, "Of Limitations of Actions," be amended in fourth division to read as follows:

Within two years, an action upon a contract, obligation or liability not founded upon an instrument of writing, also an action against a sheriff, coroner or constable upon the liability

incurred by the doing of an act in his official capacity, and in virtue of his office or by the omission of an official duty, including the non-payment of money collected upon an execution.

But this section shall not apply to an action for an escape; also an action on an open account for goods, wares and merchandise sold and delivered; also an action for any article charged in a store account.

SEC. 2. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To amend an act entitled "An act creating the office of District Attorney," approved October 27, 1866.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That section two of an act entitled "An act creating the office of District Attorney," approved October 27, 1866, be amended so as to read as follows:

§ 2. Before entering upon the duties of his office he shall execute and file with the County Recorder a bond to be approved by the Chairman of the Board of Supervisors, in the penal sum of one thousand dollars to the county, conditioned for the faithful performance of the duties of his office, and he shall take and file with the County Recorder an oath to faithfully discharge the duties of the office of District Attorney of the said county.

SEC. 2. Section four of said act is hereby amended so as to read as follows:

§ 4. The District Attorney in each county shall receive for his salary, annually, the following sum: First, of the county of Yavapai, six hundred dollars; second, of the county of

Pima, six hundred dollars; third, of the county of Yuma, three hundred dollars; fourth, of the county of Maricopa, eight hundred dollars; fifth, of the county of Mohave, four hundred dollars.

SEC. 3. Section six of said act is hereby amended so as to read as follows:

§ 6. Whenever the District Attorney shall fail, from sickness or from any other cause, to attend any term of the District Court, the Court shall designate some other Attorney to perform the duties of District Attorney during his absence from the Court, who shall receive a reasonable compensation, to be certified by the Court and paid out of the county treasury, and whenever, from any cause, the District Attorney shall be disqualified from prosecuting any one or more charges in the said Court, the Court shall in like manner designate some other Attorney to prosecute the said charge or charges, and such Attorney shall receive a reasonable compensation, to be certified by the Court and paid out of the county treasury.

SEC. 4. Section twelve of said act is hereby amended so as to read as follows:

§ 12. District Attorneys shall receive for each conviction for murder in the first degree fifty dollars; for each conviction for murder in the second degree, or for manslaughter, thirty dollars; for each conviction for any other felony, twenty-five dollars; for each conviction for a misdemeanor in any other than Justices' Court, twenty dollars; for each conviction in Justices' Court, ten dollars; for each trial for murder or manslaughter where no conviction shall be obtained, twenty-five dollars; for each trial for other felony where no conviction shall be obtained, fifteen dollars; for each trial (except in Justices' Courts) for a misdemeanor where no conviction shall be obtained, ten dollars; *provided*, that in cases wherein no conviction shall be obtained, no fees shall be paid the District Attorney unless the court or the presiding Judge of the court in which the said trial shall have been had shall certify that the failure to obtain a conviction was not occasioned by negligence or incapacity on the part of the said District Attorney. For drawing each indictment duly found by a Grand Jury, the District Attorney shall receive ten dollars; *provided*, that no fees shall be allowed or paid for drawing any indictment which shall be set aside or quashed.

For each day's attendance on a preliminary examination of a criminal charge before a Magistrate, the District Attorney shall receive five dollars.

The salaries of District Attorneys shall be audited and paid

quarterly, as proper charges against the respective counties; the fees hereinbefore mentioned shall be collected when the defendant shall be convicted, as costs from the said defendant, if practicable, and when not so collected shall be proper charges against the respective counties, and shall be audited and paid as other county charges; *provided*, that no fees shall be allowed as proper charges against the counties in cases of misdemeanor.

District Attorneys shall receive five per cent of all moneys collected by them for their respective counties, in cases where no other fees are provided, to be retained by them from the moneys so collected.

SEC. 5. Section sixteen of said act is hereby amended so as to read as follows:

§ 16. In case a vacancy shall occur in the office of District Attorney, by death, removal, or otherwise, the Board of Supervisors shall appoint some suitable person to fill such vacancy, who shall remain in office until the next general election, and until his successor be duly elected and qualified, and, if no suitable person can be found who will accept such appointment, the Board of Supervisors may enter into an agreement with any competent Attorney to perform the duties of District Attorney for a time or term (less than the said unexpired term of office) to be specified in such agreement and to receive from the county as compensation therefor a sum to be specified in such agreement, and not to exceed the fees and salary of the District Attorney. A minute of such agreement shall be entered in the record of the proceedings of the Board of Supervisors, specifying the person to be appointed, the time or term during which he is to serve, and the compensation he is to receive, and the Board of Supervisors shall then appoint the said Attorney District Attorney of the said county, and the said District Attorney shall then file his bond and take the oath as in case of an appointment to fill a vacancy, but he shall be allowed to resign his said office at the expiration of the time or term specified in such agreement.

SEC. 6. All acts and parts of acts in conflict with the provision of this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage in all of the counties of this Territory with the exception of the county of Yuma.

APPROVED February 13th, 1873.

AN ACT

Relating to Common Carriers.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Every person, association or company doing business within this Territory as common carriers, who shall at any time have any unclaimed article or package, not perishable in nature, remaining for a period of ninety days in their possession, after carrying the same to its proper destination, as directed or marked, and upon which their reasonable charges for freight, storage, etc., shall remain unpaid, are hereby authorized and empowered to collect such charges in the manner hereinafter provided.

SEC. 2. In all cases where the owner or consignee and his place of residence is known, the common carrier shall first cause notice to be given him personally, or by mail, of the fact of such unclaimed property remaining on hand; and, after the expiration of ninety days, if such article or package remains unclaimed and the charges thereon unpaid, the common carrier shall cause notice, together with a description of the property, as near as may be, to be published for a period of twenty days in some newspaper published in the county, or if there be no newspaper published within the county, then by posting such notice for a like period in at least three of the most public places in the county. Such notice shall contain the name of the consignee and of the consignor, if possible to obtain them, the amount of charges due thereon, and such further description of the property as may be practicable or necessary to identify the same. Also the time and place at which such property will be disposed of to pay the charges due thereon.

SEC. 3. At the expiration of the twenty days' notification by publication or posting, such carrier may, at the time and place thereby appointed, proceed to sell such unclaimed property at public auction to the highest bidder.

SEC. 4. Whenever any common carrier shall have remaining in his possession, unclaimed, any property, package or article, perishable in nature, after having carried the same to its proper destination, as marked or directed, he or they may proceed to

dispose of the same to the best advantage practicable for the payment of his charges thereon. No sale of perishable property shall be made by any common carrier without first giving at least one hour's notice thereof at the place of sale, and without first giving notice to the owner or consignee thereof for at least twenty-four hours before such sale, provided such owner or consignee is known and can be so notified without loss or danger to such property.

SEC. 5. After the sale of either class of property, the common carrier may deduct from the money received thereat his reasonable charges for freight, storage, etc., and the costs of sale, and if any money remain over it shall be paid to the owner or consignee of such property, if he be known and can be found. If not to be found, such remaining money shall be paid, as soon as practicable, to the County Treasurer of the county in which the sale took place. There shall also be filed with the Treasurer, at the time of paying over the money, a copy of the notice required to be given in section two of this act; shall be sworn to as correct and as having been given for the time, by such section two required, and such verified copy shall be filed with the Treasurer; and, in cases of the sale of perishable property, there shall be filed with the Treasurer at the time of paying over such remaining money, a verified statement showing the character of the property sold, the time and place of sale, the amount received therefor, and the amount of charges for which the same was sold, and the amount of costs of sale.

The Treasurer shall give notice of the amount of money received, and on what account received, by posting the same for a period of six months outside of his office door. If, at the expiration of six months' notice, as herein required, the said money remains unclaimed, the Treasurer is hereby authorized and directed to carry and apply such money to the school fund of his county, as having escheated thereto.

SEC. 6. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

Amendatory of chapter forty-eight of Howell Code,
"Of Proceedings in Civil Cases."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That section four hundred and twenty-seven, chapter forty-eight of Howell Code, "Of proceedings in Civil Cases," be amended to read as follows:

§ 427. An affidavit taken in another State or Territory, to be used in this Territory, shall be taken before a Commissioner appointed by the Governor of this Territory, to take affidavits and depositions in such State or Territory, or before any Judge or notary public, or clerk of a court having a seal.

SEC. 2. That section four hundred and twenty-nine of chapter forty-eight of Howell Code, "Of Proceedings in Civil Cases," be amended so as to read as follows:

§ 429. When an affidavit is taken before the Judge of a Court in another State or Territory, or in a foreign country, the genuineness of the signature of the Judge, the existence of the Court, and the fact that such judge is a member thereof, shall be certified by the Clerk of the Court under the seal thereof.

SEC. 3. This act shall be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To legalize certain transcribed records of the county of
Maricopa.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the transcribed copies of all the records of deeds, mortgages, chattel mortgages, releases of mortgages, bills of sale, pendency of actions, marriages, contracts of marriage, powers of attorney, leases, notices of water claims and pre-emption claims, recorded in the office of the County Recorder of the

county of Maricopa, prior to the first day of October, A. D. 1872, and which were originally recorded in all together in one book in said office, and afterward, by order of the Board of Supervisors of said Maricopa county, transcribed into separate and proper books, be and the same are hereby made the lawful records of said county, and shall have the same legal force and effect as the original records could or would have had, and copies of said transcribed records shall be received as evidence, in all courts of justice in this Territory, under the same rules and with the same force and effect in law as copies of the original records.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To amend section six hundred and fifty-seven of chapter eleven of Howell Code, "Of Costs in Criminal Actions and Proceedings."

Be it enacted by the Legislative Assembly of the Territory of Arizona, that section six hundred and fifty-seven of chapter eleven of Howell Code be amended so as to read as follows:

SECTION 1. The Magistrate, if he be a Justice of the Peace, or a Mayor, or a City Recorder, may receive for all the proceedings before him, to and including his decision upon the question of discharging the defendant or holding him to answer five dollars; for taking bail after commitment by himself or another magistrate one dollar; and twenty cents per folio for all testimony taken before him.

SEC. 2. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall be in force and effect from and after its passage.

APPROVED February 13th, 1873.

AN ACT

Concerning Roads and Highways.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That the provisions of an act entitled an act concerning roads and highways, approved November 6, 1866, and of an act entitled an act to provide for the location, construction and maintenance of public roads in the Territory of Arizona, approved February 18, 1871, and all acts amendatory thereto, shall not, from and after the passage of this act, apply to or be in force within the limits of any incorporate village, town or city in this Territory.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To prohibit the Sale of Liquor to Indians.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That any person or persons within this Territory who shall sell or give any whisky, brandy, rum, gin, wine or any other spirituous or intoxicating liquors to an Indian or Indians, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars and not more than three hundred dollars, and imprisoned in the county jail not less than one month nor more than six months, or both such fine and imprisonment in the discretion of the court.

SEC. 2. Whenever a complaint shall be made upon oath to any Justice of the Peace of the proper township, that any person or persons have been guilty of selling or giving spiritu-

ous liquors to any Indian as provided for in section one of this act, within this Territory and within the proper county and township where such Justice resides, he shall issue his warrant for the arrest of such person or persons so offending, who shall be tried as provided for in other cases of misdemeanor.

Sec. 3. One-half of all fines collected under and by virtue of this act shall be paid to the informant or informants who shall have caused the arrest and conviction of the person or persons offending upon the satisfaction of the court to the justice of such claimant thereto, and the other half shall be paid into the county treasury as other fines collected for misdemeanors.

Sec. 4. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

Relating to the care and treatment of Insane persons.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. The Governor of this Territory is hereby authorized, in person or by such agent as he may appoint for that purpose, to contract, on the part of this Territory, with the authorities of the State of California, or with the proprietors of any hospital in said State, for the proper keeping, treatment and maintenance of the insane of this Territory, if, in his judgment, such contract can be made upon reasonable terms, and in such manner as to secure the skillful treatment of such persons.

Sec. 2. Whenever such contract shall have been entered into the Board of Supervisors of the several counties in this Territory may, in their discretion, whenever any person in

their respective counties shall have been found insane and ordered to be confined, cause such insane person to be sent under proper care to such hospital.

SEC. 3. The expense of sending such person to such hospital shall be borne in all cases by the respective counties from which such persons are sent, but their expenses and all charges for their care, treatment and maintenance while at such hospital, as well as expenses incident to their discharge therefrom or death, shall be chargeable to this Territory.

SEC. 4. The Governor shall, from time to time, certify to the Territorial Auditor the amounts due under such contract as shown by properly verified accounts rendered to the Governor by the owner, proprietor or managing agent of any institution with whom such contract may be made, which accounts so verified shall be made at least once every three months, together with a statement showing the condition of any such person or persons under treatment at said institution, and it shall be the duty of the Auditor to draw his warrant on the Territorial Treasurer for said amounts, and the Treasurer shall pay the same out of any money in the Territorial treasury not otherwise appropriated.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

Amendatory of an act entitled "An act providing for the holding of District Courts in Maricopa County," approved February 18, 1871.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That section one of an act entitled "An act providing for the holding of District Courts in Maricopa County," be amended so as to read as follows:

§ 1. The county of Maricopa is hereby made a part of the Third Judicial District of this Territory, and the Judge of said District is hereby directed and required to hold a term of the District Court at the county seat of said county, on the first Monday in September in the year 1871, and thereafter he shall hold two terms of the District Court in said county in each year, one to commence on the first Monday in April, and one to commence on the second Monday in September.

SEC. 2. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To reimburse the County of Yavapai for expenses incurred in maintaining Insane persons.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the sum of five hundred and sixty-six dollars and eighty-seven cents be and the same is hereby appropriated out of the general fund of the Territory, from any moneys not otherwise appropriated, to the county of Yavapai, for the purpose of re-imbursing said county for the money paid to Drs. Langdon and Clark, physicians at the insane asylum at Stockton, California, for the care and maintenance of Mike Brassley, an insane person at said institute.

SEC. 2. That the Territorial Auditor is hereby authorized to draw his warrant upon the Territorial Treasurer for the amount named in section one of this act, in favor of the County Treasurer of Yavapai county, for and on behalf of said county, and the Territorial Treasurer is hereby authorized to pay said warrant out of the general fund of the Territory.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To amend section four hundred and twenty-nine of chapter eleven, Howell Code, entitled "Of Proceedings in Criminal Cases."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Section four hundred and twenty-nine of chapter eleven, Howell Code, entitled "Of Proceedings in Criminal Cases," is hereby amended so as to read as follows:

§ 429. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not be more than one day for each dollar of such fine, nor less than one day for five dollars of such fine, as the court may direct.

SEC. 2. This act shall take effect and be in force from and after its passage:

APPROVED February 13th, 1873.

AN ACT

To extend the corporate limits of the "Village of Tucson" for certain purposes.

WHEREAS, a bill is now before Congress, with a probability of soon becoming law, providing for the surrender to the "Village of Tucson" of certain lands for certain purposes; now, therefore,

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. The corporate limits of the "Village of Tucson" are hereby extended so as to include sections two, eleven and fourteen, and the east half of sections three, ten and fifteen of township fourteen, south range, thirteen east, Gila and Salt River Meridian; the lands by this act so placed within the corporate limits of said "village" to be designated and known as the Western Addition to the "Village of Tucson," and the corporate authority of said village is hereby extended to and over the said "Western Addition" to the "Village of Tucson" to the same extent as though said Western Addition "had been originally incorporated within the limits of said 'Village of Tucson';" *provided*, that no municipal police regulations of the said "Village of Tucson" shall in any case extend to or be in force in said "Western Addition."

SEC. 2. Whenever Congress shall surrender to the "Village of Tucson" the whole or any portion of the lands embraced in said "Western Addition," it shall be the duty of the corporate authority of said "village" to proceed without delay in the execution of the trust in any act of Congress providing for the surrender of lands to said "Village of Tucson" specified.

SEC. 3. After the surrender by the United States of the lands or any portion of the same, embraced in the said "Western Addition," as by this act defined to the "Village of Tucson," any person owning or claiming any tract or tracts of land within the limits of said "Western Addition" may make application to the Mayor and Council of said "Village of Tucson" for title deeds to him of such lands as by him claimed; such application shall be in writing, and shall give as near as may be the description of the lands claimed, together with the names of adjacent surrounding claimants of land, if known; such appli-

cation shall also be accompanied by a survey and plat of the tract or tracts so claimed.

SEC. 4. Upon receiving any such application as in the preceding section provided for, the Mayor and Council of said "Village of Tucson" shall cause notices to be posted in three public places in said "Village," which notices shall contain the name of the person or persons making application for such title deeds, together with a general description of the lands for which such title deeds are asked. Said notice shall also state that upon a day to be named therein (which day shall not be less than thirty nor more than forty days from the day such notices are first posted), the Mayor and Council of said "Village of Tucson" will issue title deeds for the lands in any such notice specified, to the person or persons making application therefor—unless there be objections made thereto—two of which notices shall be posted as follows: One in a conspicuous place upon the tract of land for which title is asked, and one upon the door of the office of the Recorder of said "village."

SEC. 5. Upon the day in such notice mentioned, the Mayor and Recorder of said "village" shall meet at the office of the latter, and upon satisfactory proof that notices have been posted as by this act required, if no objections be filed or presented, shall make out and deliver to the applicant title deeds to the land covered by his application. Such deeds shall be signed by the Mayor in his official capacity, and countersigned by the Recorder in form as follows: By order of the Council of the "Village of Tucson," A. B., Recorder, which deed shall be acknowledged by the Mayor as the act and deed of the "Village of Tucson," and when so executed and acknowledged shall be deemed to convey all the right, title, interest and claim which the United States of America and the "Village of Tucson" had at the time of the execution of such conveyance, either in law or equity, to the lands in such conveyance described.

SEC. 6. If at any time after application made for any title deed as in this act specified, and before such deed has been executed, any person shall object to the delivery of such deed to the applicant therefor, upon the ground that the land in such application described of right belongs to such person objecting, or that some other person for whom he appears, either as attorney in fact or at law, is better entitled to such lands than the applicant therefor, the Mayor and Council shall suspend all further proceedings upon such application until the rights of the respective parties be settled either by adjustment between themselves or by the final judgment of a court having jurisdiction,

and upon such determination deeds shall be given to the person entitled, as hereinbefore specified; *provided*, that if any person so opposing the giving of such title-deed to the applicant therefor shall fail or neglect, for a period of sixty days from the day in the notices fixed for the issuance of such deeds, to institute proceedings in some court having jurisdiction of the subject-matter of such controversy, for the settlement and adjustment of the rights of the respective parties to the lands in dispute, then the Mayor and Recorder shall give to the applicant for such land, title-deeds the same as though no contest had been made, and such deed so given shall have the same force and be of the same effect as though no contestant had appeared.

SEC. 7. All deeds executed under the provisions of this act shall be acknowledged before some officer authorized by the laws of this Territory to take acknowledgment of deeds, and recorded in the office of the County Recorder of Pima county.

SEC. 8. The only charges against any applicant for title deeds to lands in this act specified shall be: 1st. The actual cost of drawing and posting the notices herein required, which shall not exceed in any case the sum of three dollars, and the actual cost of drawing and acknowledging the title papers, which latter shall not exceed in any case the sum of five dollars, and no other charge whatever shall be made against any applicant.

SEC. 9. The application, survey and plot, one copy of the notice posted, and the papers filed in resistance of any application, shall be carefully filed and preserved by the Recorder of said "village," and such papers shall, at all times, be subject to inspection by any person interested therein.

SEC. 10. This act shall take effect and be in force from and after its passage.

APPROVED February 13th, 1873.

AN ACT

To facilitate the final settlement of the estate of Robert Cavanagh, deceased.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That Thomas Hughes, receiver of the real property of the estate of Robert Cavanagh, deceased, duly appointed in an action pending in the District Court of the Second Judicial District of the Territory of Arizona, in and for the county of Yuma, for the escheat of the property of said estate to the Territory of Arizona, be and he is hereby authorized to sell all the real property belonging to said estate in the county of Yuma, at public auction, for cash, to the highest bidder, after notice of not less than twenty days, given by publication in a newspaper published in the said county of Yuma, if there be one, and by posting notices of the time and place of such sale in at least three public places in said county for the same time.

SEC. 2. The sale of said real property shall be made subject to confirmation by the District Court of the Second Judicial District; and the said Thomas Hughes, receiver as aforesaid, is hereby authorized, empowered and directed to execute deeds of the said real property to the purchasers thereof, and such deeds duly executed and acknowledged shall convey to the said purchasers all the right, title and interest of the said Robert Cavanagh, in and to the said real property at the time of his death.

SEC. 3. From the proceeds of said sale the said Thomas Hughes, receiver as aforesaid, shall pay the expenses of the said sale, and the costs and expenses of the said action for the escheat of said property, and shall deliver the balance remaining in his hands after such payments to the administrator of said estate who, on receiving the same, shall proceed to make a final settlement of the said estate.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

To extend the southern boundary of Maricopa county.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the southern boundary of the County of Maricopa be so extended as to include all of that portion of the Territory now in the limits of Pima county, described as follows: Commencing at a point on the Gila river five miles west of Maricopa wells; thence due south to the north latitude of $32^{\circ} 34'$; thence due west to the eastern boundary of Yuma county; thence along the line of said Yuma county to the Gila river.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

To provide for the Civil Expenses of the Territorial Government.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the following sums be and they are hereby appropriated for the several objects herein mentioned, viz.:

First. For the salaries of the Territorial Treasurer, Territorial Auditor and Attorney-General, to be paid as provided by law, the sum of three thousand four hundred dollars (\$3,400).

Second. For the Territorial Library, for paying postage, help and extra shelving, to be expended equally for the years 1873 and 1874, one thousand dollars (\$1,000), to be expended under the direction of the Territorial Librarian.

Third. For the distribution of public documents, proclamations of the Governor, the laws and journals of the Legislative Assembly, to be expended under the direction of the Secretary

of the Territory, in such sums as from time to time may be required, the sum of one hundred dollars (\$100).

Fourth. The Territorial Treasurer shall receive and keep in his office the weights and measures belonging to the Territory of Arizona.

Fifth. For printing official documents and other necessary printing, and to be expended under the direction of the Territorial Auditor, in equal proportion for the years 1873 and 1874, the sum of three hundred dollars (\$300).

Sixth. For expenses of the Supreme Court, to be expended equally for the years 1873 and 1874, under the direction of the Chief Justice of the Territory, the sum of six hundred dollars (\$600), and there is hereby appropriated, out of any moneys not otherwise appropriated, the sum of forty dollars (\$40), out of the Territorial treasury, as a deficiency for the years 1871 and 1872.

Seventh. For rent of Territorial library room, and to be expended in equal proportions in the years 1873 and 1874, as provided for by law, the sum of three hundred dollars (\$300).

Eighth. For paying extra Clerk hire for the Legislative Assembly at the present session, to be audited on the certificate of the Speaker of the House of Representatives or the President of the Council, certifying that such services were rendered and that such persons are entitled to receive such pay and allowance for said services, the sum of six hundred dollars (\$600) is hereby appropriated, to be divided equally among three Clerks, and to pay C. S. Leon, for services as interpreter and translating bills, the sum of two dollars per day, total, eighty dollars (\$80).

Ninth. For the purchase of the California Supreme Court Reports the sum of three hundred dollars (\$300), for which the Territorial Auditor is hereby authorized to draw his warrant upon the certificate of the Territorial Secretary that such sum has been expended for said California Law Reports.

Tenth. For the salary of the Superintendent of Public Instruction, for the years 1871 and 1872, one thousand dollars (\$1,000).

Eleventh. For printing for the present Legislative Assembly, the sum of three hundred and sixty-seven dollars (\$367), and for printing the Territorial school laws, passed by the Legislature of 1871, the sum of one hundred and twenty-five dollars (\$125), for which the Territorial Auditor is authorized to draw his warrant upon the Territorial Treasurer, upon the return and delivery to him of warrant No. 318, dated November 18, 1871, in favor of John Wasson, said warrant being for the sum of one hundred and twenty-five dollars (\$125).

Twelfth. For paying postage of the present Legislative

Assembly, one hundred and fifty dollars (\$150), and the Territorial Auditor is hereby authorized to draw his warrant for the same in favor of C. H. Lord, postmaster at Tucson.

Thirteenth. For the contingent expenses of the Territorial Government, for the years 1873 and 1874, the sum of two thousand dollars (\$2,000), to be expended by the Governor as rewards for the apprehension of criminals, and for the payment of agents employed between this Territory and foreign States, and other expenses incidental thereto.

Fourteenth. To the Adjutant-General of the Territory, for the distribution and care of arms, rent of rooms, etc., one thousand dollars (\$1,000).

Fifteenth. For contingent expenses, for papers furnished to members of this Legislature, fifty dollars to the Editor of the "Arizona Miner," and fifty dollars to the Editor of the "Arizona Sentinel."

SEC. 2. The salaries aforesaid, and other appropriations, shall be paid out of the general fund, and shall apply from the first day of January, 1873, except where otherwise provided in this act or other acts, and end on the 31st day of December, 1874. The Territorial Auditor shall not draw his warrant for any civil expenses other than those specified in this act; *provided*, that this section shall not apply to acts regulating the pay and mileage of members of the Legislature and its attachees, and an act regulating and providing for the expenses and keeping of the Territorial prisoners.

SEC. 3. That the Territorial Auditor shall draw his warrant for the aforesaid salaries quarterly, and for the amounts due for said quarter, and for all other appropriations as far as may be practicable.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

To provide for the Adoption of Children.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. That any person over the age of twenty-one years, and bearing a good moral character, may adopt one or more minors in the manner hereafter provided.

SEC. 2. No adoption shall be allowed by a married man without the consent of his wife, which shall be in writing and filed with the Probate Judge at the time of such adoption; and no adoption shall be allowed by a married woman without a similar consent on the part of her husband.

SEC. 3. A legitimate child shall not be adopted by any person without the consent of the parents of the said child, if they be living, and in the Territory; nor shall an illegitimate child be adopted by any person without the consent of the mother of the said child, if she be living, and in the Territory; *provided*, that in case the said illegitimate child shall have been abandoned by its mother, the consent of the mother shall not be deemed necessary; and, *provided further*, that if a child have no parents living, and have a guardian or guardians, the consent of such guardian or guardians shall be required as in the case of the parents; and if the child be over twelve years of age, the consent of such child shall in all cases be necessary.

SEC. 4. Any person desiring to adopt a minor under the provisions of this act shall present a petition to the Probate Judge of the county in which such person resides, setting forth the name, age, residence and occupation of the petitioner, and whether married or unmarried; and also the name, age and residence of the minor desired to be adopted, with the names of the parents if the same can be ascertained, and, if the parents be not living, the name of the guardian, if there be one, and shall at the same time file with the Probate Judge the consent in writing of the parent or parents of the said minor, if living and in the Territory, or the consent of the guardian if there be one; upon receiving such petition and the filing of such consent, the Probate Judge shall make an order appointing a day for the hearing thereof, which shall not be less than five nor more than fifteen days from the time of making the order.

SEC. 5. If on the hearing the Probate Judge shall be satisfied from the evidence adduced that the statements in the petition are all true, and that the petitioner is a person of good moral character, and possessed of sufficient means to enable him or her to support and educate the said minor, and that the said minor will be benefited by the adoption, he shall make and enter an order in the record of the Probate Court, reciting the same, the name of the minor adopted, and the person adopting him or her, and that all the requirements of this act have been complied with, and that the said minor shall thenceforth bear the name of the person so adopting him or her, and from and after that time, the same shall be the lawful name of the said minor, and the said minor so adopted shall become by the said adoption the lawful heir of the person so adopting him or her.

SEC. 6. The person adopting a minor, as hereinbefore provided, and the minor so adopted by the said person shall bear toward each other, in all respects, the legal relation of parent and child, and the said minor shall enjoy all the legal rights and be subject to all the duties appertaining to that relation; *provided*, however, that if the adopted child die, leaving descendants, or brothers or sisters, the person adopting shall not inherit the estate of the adopted child; and it shall not be lawful for the adopted child, before arriving at the age of twenty-one years, to make any testamentary disposition of his or her estate in favor of the person adopting him or her.

SEC. 7. The natural parents of an adopted minor shall be, from the time of adoption, relieved of all parental duties and responsibilities toward the minor so adopted, and shall have no further control over him or her.

SEC. 8. Either or both parents of an illegitimate child, or the father with the consent of his wife, or the mother with the consent of her husband, may acknowledge such child as his or their own, and such acknowledgment shall legitimize such child, and such child shall from the time of such acknowledgment be the legal heir of the parent by whom it shall be so acknowledged.

SEC. 9. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

To provide for obtaining a New Seal for the office of the Secretary of the Territory.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That the Secretary of the Territory of Arizona is hereby authorized to have made an official seal for his office, to be of the same design as the one now in use in his said office, but may be larger in size. And when made and deposited in the office of said Secretary shall be used exclusively as his official seal of this Territory.

SEC. 2. This act shall take effect immediately.

APPROVED February 14th, 1873.

AN ACT

To amend an act entitled An act concerning Marks and Brands, approved February 18, 1871.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That sections six and nine of an act entitled An act concerning marks and brands, approved February 18, 1871, be and are hereby repealed.

SEC. 2. That section four be amended to read as follows:

§ 4. On the trial of any action to recover the possession of any animal, which is marked or branded as provided in this act, the mark or brand shall be deemed *prima facie* evidence that the animal belongs to the owner or owners of the mark and brand, and that he, she or they were entitled to the possession of the said animal, at the time of the commencement of the action, which action shall conform to the proceedings had in Justices' Courts in civil cases.

SEC. 3. That section five be amended to read as follows:

§ 5. No person shall use more than one mark, brand, or counter-brand, unless the same shall have been acquired by purchase and recorded as provided in section two.

SEC. 4. That section seven be amended to read as follows:

§ 7. Any person or persons selling cattle which are not intended for slaughter, or any horses, inares, mules, jacks or jinnies, shall be required to counter-brand them on the shoulder or give a written descriptive bill of sale, and any person or persons not complying with the provisions of this section cannot recover by virtue of his or their brand.

SEC. 5. That section eleven be amended to read as follows:

§ 11. The provisions of this act shall apply to the county of Yuma alone.

SEC. 6. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

To appropriate money out of the General Fund of the Territory of Arizona to the several Counties thereof for Educational Purposes.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. There shall be paid out of any money in the Territorial Treasury not otherwise appropriated five thousand dollars, to be divided equally with the several counties of the Territory for educational purposes as hereinafter provided.

SEC. 2. It shall be the duty of the Territorial Auditor to draw his warrant on the Territorial Treasurer for one thousand

dollars in favor of each of the several counties of the Territory, and it shall be the duty of the Territorial Treasurer to pay said warrants out of any moneys in the treasury not otherwise appropriated, upon the orders of the several County Treasurers, and it shall be the duty of the several County Treasurers to receive and keep said money until drawn as hereinafter provided.

SEC. 3. It shall be the duty of the Superintendent of Public Schools to appropriate said money for educational purposes in their respective counties subject to the approval of the Board of Supervisors in each of said counties.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

To amend an act entitled An act fixing the Apportionment for Members of the Legislative Assembly of the Territory of Arizona, and providing for the taking of a Census and for other purposes, approved February 18, 1871.

Be it enacted by the Legislative Assembly of the Territory of Arizona :

SECTION 1. Members of the Legislative Assembly of the Territory of Arizona shall be elected by counties and as provided for in this act, and at the general election, to be holden on the first Tuesday after the first Monday in November, A. D. 1874, and every two years thereafter, and until an enumeration of the inhabitants to be taken as hereinafter provided in this act, and a different apportionment made agreeable to law, the county of Pima shall elect three members of the Council and six members of the House of Representatives; the county of Yuma shall elect one member of the Council and three members of the House of Representatives; the county of Mohave

one member of the Council and one member of the House of Representatives; the county of Yavapai shall elect three members of the Council and six members of the House of Representatives, and the county of Maricopa shall elect one member of the Council and two members of the House of Representatives.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

To provide for the incorporation of Religious, Social and Benevolent Societies.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. It shall be lawful for all churches, congregations, religious, moral, benevolent society, order of Odd Fellows, and order of Free and Accepted Masons, or scientific associations or societies, by such rules and methods as their rules, regulations or discipline may direct, to appoint or elect any number, not less than three nor more than five, as trustees or directors to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof, and the number first elected or appointed shall not thereafter be increased or diminished; and all vacancies that may thereafter take place by death, resignation or otherwise of any of the trustees, may be filled by election or appointment, in the same manner; *provided*, that no such election or appointment, as provided in the next section, shall have been filed with the recorder of the county in which the original certificate of incorporation shall have been filed.

SEC. 2. Upon the appointment or election of such trustees or directors, a certificate of such appointment or election shall be executed by the person or persons making the appointment or the judges holding the election, stating the names of the

trustees or directors; the name by which the corporation shall thereafter forever be called and known, shall be particularly mentioned and specified in the certificate made at the first election or appointment of trustees or directors.

SEC. 3. Such certificate shall be acknowledged by the person making the same, or proved by a subscribing witness thereto, before some officer authorized to take acknowledgments of deeds, and recorded together with the certificate of such acknowledgment or proof by the recorder of the county within which such church, congregation, religious, moral, beneficial, literary or scientific society or associations shall be situated.

SEC. 4. Such corporation may have a common seal and may alter the same at pleasure. A majority of the whole number of trustees, or directors, shall form a board for the transaction of business, and they may take into their possession and custody all the temporalities of such corporation or association, whether the same shall consist of real or personal estate, and whether given, granted or devised, directly or indirectly, to such association or corporation, or to any person or persons, for their use and in the name of such corporation, may sue and be sued, may recover and hold all the debts, demands, rights and privileges, all the churches, burying places, halls, school-houses, hospitals or other buildings, all the estate and appurtenances belonging to such corporation or association. They may hire, lease, improve the same, erect all houses and buildings that are necessary to carry out the object of the association or corporation, and perform all duties imposed on them by the regulations, rules or discipline of such organization.

SEC. 5. It shall be lawful for the Probate Judge within and for the county in which any such corporation shall have been constituted, on the application of such corporation, and on its satisfactorily appearing to such court, by competent proof, by affidavit or otherwise, that due notice by personal service or by publication in some newspaper or by posting notices in three public places within the county, as the said court or Judge thereof shall direct, has been given to all persons interested in the matter, and that it will be to the benefit, interest and advantage of such church, congregation, religious, moral, beneficial, literary or scientific association or society, to make an order for the sale or mortgage of any real estate belonging to such corporation, or for the confirmation of any contract under which a valid lien may attach to such property; and it shall be lawful for any member of such church, congregation, association or society to oppose, by affidavit or otherwise, the grant

ing of such order, and it shall be lawful for said Judge at the time of making such order, directing the execution of a mortgage, also to make a further order allowing such corporation to make and deliver with such mortgage a bond or promissory note under the corporate seal and in the corporate name of such corporation, as evidence of the indebtedness to secure which such mortgage is directed to be made; and it shall be the duty of said court, when granting such order or orders, to direct therein the application of the moneys arising from such sale, or procured under such contract or upon such security as it shall be made to appear to said Judge would be for the interest and advantage of such church, congregation, association or society.

SEC. 6. Every corporation of the character aforesaid, heretofore incorporated in pursuance of law and not since dissolved, shall be and is hereby established and confirmed, and shall be known by the name mentioned and specified in its certificate of association as the name by which the trustees shall be called, but the board of trustees or directors may at any time make a certificate under the hands of the majority of them, particularly stating and designating the name by which said corporation or association shall thereafter be called and known, which certificate shall be acknowledged by the person executing the same before some officer authorized to take the acknowledgment of deeds, and shall be recorded in the office of the County Recorder of the county where the original certificate was recorded, and also in the county in which such church or association meet for the transaction of business; and the name so designated shall thereafter be the name of the said corporation. And in case of the dissolution of any such corporation, or any corporation hereafter to be formed in pursuance of the provisions of this act, at any time within six years after such dissolution, and upon all the estate, real and personal, formerly belonging to the same and not lawfully disposed of, shall vest in said corporation as if there had been no such dissolution.

SEC. 7. Such corporation may accept, receive, purchase and hold real estate, and all the lands, tenements, and hereditaments that have been, or may hereafter be lawfully conveyed by devise, gift, grant, purchase or otherwise, to any person or persons as trustee or trustees, for the use of said corporation or association, shall descend with the improvements upon the death of such person or persons, trustee or trustees, unless otherwise expressly provided in such devise, conveyance, or deed of trust to said corporation; *provided*, that the amount of real estate held by any such corporation or association shall never exceed the amount named in the following section.

SEC. 8. The real estate held by the trustees in trust for such organization shall in no case exceed four whole lots in a town or city, or twenty acres in the country, nor shall the annual increase of such real and personal property held in trust by them exceed the sum of twenty thousand dollars; *provided*, that any Lodge of the ancient order of Free and Accepted Masons, or the ancient order of Odd Fellows in this Territory may acquire and hold such property, real and personal, as may be deemed necessary by the proper authorities thereof to carry out the charitable purposes of said Lodge or Lodges, or for the establishment and endowment of a college, school or schools, libraries, cabinets, and other literary and scientific objects in said Territory, and for the necessary use and ceremonies of said orders and of said societies, and may sue and be sued, and have a common seal, and such other general powers as are granted to corporations under an act entitled an act "Of general incorporation," approved November the sixth, one thousand eight hundred and sixty-six.

SEC. 9. It shall be the duty of said trustees annually to make a full report of all property, real and personal, held in trust by them, and of the condition of the corporation to the society or association by which they have been appointed or elected, a copy of which report shall be filed in the County Recorder's office, where the original certificate is filed, with an affidavit of the truth of such report, and also, that such association or corporation has not been engaged, directly or indirectly, in any other business than such as is set forth in the original certificate on file.

SEC. 10. Whenever the rules, regulations and discipline of any religious denomination, society, or church, require for the administration of the temporalities thereof, and the management of the estate and property thereof, it shall be lawful for the bishop, chief priest or presiding elder of such religious denomination, society or church, to become a sole corporation in the manner prescribed in this act as nearly as may be, and with all the powers and duties, and for the uses and purposes in this act provided for religious incorporations, and subject to all the conditions, limitations and provisions in said act prescribed; *provided*, that for the proof of the appointment or election of such bishop, chief priest, or presiding elder, it shall be sufficient to record with the County Recorder of the county in which such bishop, chief priest or presiding elder resides, the original or a copy of his commission or certificate, or letters of election or appointment, duly attested, and that all property held by such bishop, chief priest or presiding elder, shall be

in trust for the use, purpose and behoof of his religious denomination, society or church, and that the limitation in section eight shall apply to corporations formed under this section; and *provided, also*, that the Probate Judge of the county in which any incorporation is formed under this act shall at all times have access to the books of such corporation.

SEC. 11. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

Fixing the times for holding terms of the District Court of the Second Judicial District in and for Mohave county.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That two terms of the District Court of the Second Judicial District shall be held each year in and for the county of Mohave. Such terms shall commence on the first Monday in May and the first Monday in October respectively, for each year.

SEC. 2. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

AN ACT

To define the Jurisdiction of Probate Courts.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. The Probate Court of each county shall be a Court of Record, and shall have a Clerk and seal. The said Probate Court shall have the jurisdiction conferred in this act, and such other jurisdiction as shall be conferred by law.

SEC. 2. Wills shall be proved, letters testamentary or of administration shall be granted:

First. In the county of which the deceased was a resident at or immediately previous to his death, in whatever place his death may have happened.

Second. In the county in which he may have died leaving estate therein, and not being a resident of the Territory.

Third. In the county in which any part of his estate may be, and having died out of the Territory, and not having been a resident thereof at the time of his death.

SEC. 3. When the estate of the deceased is in more than one county, he having died out of the Territory, and not having been a resident thereof at the time of his death, or being such non-resident, and dying within the Territory and not leaving estate in the county where he died, the Probate Court of that county in which application is first made for letters testamentary shall have exclusive jurisdiction of the settlement of the estate.

SEC. 4. Any person having the custody of any will shall, within thirty days after he shall have knowledge of the death of the testator, deliver it into the Probate Court which has jurisdiction of the case, or to the person named in the will as executor.

SEC. 5. Any person named as executor in any will shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, present the will, if in his possession, to the Probate Court which has jurisdiction.

SEC. 6. If he intends to decline the trust, he shall, at the same time, file his renunciation in writing.

If he shall neglect for thirty days to file his renunciation, such neglect shall be equivalent to a renunciation, unless for cause shown the Probate Court or Judge shall extend the time.

If he intends to accept, he shall present with the will a petition, setting forth the facts necessary to give jurisdiction, and when the same are known, the names, ages and residence of the heirs and devisees of the deceased, and the probable value and character of the property of the estate, and praying that the will be admitted to probate, and that letters testamentary be issued to him.

If the jurisdictional facts existed, but are not fully set forth in the petition, and the same shall be afterward proved in the course of the administration, the probate of the will and the subsequent proceedings shall not, on account of such want of jurisdictional averments, be held void.

SEC. 7. Every person who shall neglect to perform any duties required in the preceding sections, without reasonable cause, shall be liable to every person interested in the will for damages they may sustain in consequence of such neglect.

SEC. 8. Any person named as executor in a will, though the will is not in his possession, may present his petition to the Probate Court, which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary may be issued to him.

SEC. 9. Any person having an interest in the will may, in like manner, present a petition praying that it may be required to be produced and admitted to probate.

SEC. 10. If it be alleged in any petition that any will is in the possession of a third person, and the Court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will requiring him to produce it at a time to be named in the order.

SEC. 11. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the Court, be committed to the jail of the county and be kept in close confinement until he shall produce the will.

SEC. 12. Application for the probate of a will, and for the issuance of letters, may be made to the Probate Judge out of

term time, and the Probate Judge may also, out of term time, issue all necessary orders and writs to enforce the production of any will.

He may also appoint a special term for the hearing of any such application.

SEC. 13. When any will shall have come into the possession of the Probate Court, the Court shall appoint a time for proving it, which shall not be less nor more than thirty days, and shall cause notice to be given thereof, by publication, not less than once a week, in some newspaper, if there is one printed in the county, or if not, by notices in writing, posted in three public places in the county.

SEC. 14. If the heirs of the testator reside in the county the Court shall also direct citations to be issued and served upon them to appear and contest the probate of the will at the time appointed.

SEC. 15. If the will is presented by any other person than the one named as executor, or if it is presented by one of several persons named as executors in the will, citations shall also be issued and served upon such person or persons, if resident within the county.

SEC. 16. The Court shall also direct subpoenas to be issued to the subscribing witnesses to the will, if they reside in the county.

SEC. 17. At the time appointed, or at any time to which the hearing may be continued, upon proof being made that notice has been given as required in the preceding sections, the Court shall proceed to hear the testimony to prove the will.

SEC. 18. Any person interested may appear and contest the will.

If it appear that there are minors who are interested, or persons residing out of the county, the Court shall appoint some attorney to represent them.

SEC. 19. If no person shall appear to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed, in all particulars, as required by law, and that the testator was of sound mind at the time of its execution.

SEC. 20. If any person appear and contests the will he shall file a statement in writing of the grounds of his or her opposition; when any issue or issues of fact shall be joined in the Probate Courts, respecting the competency of the deceased to make a last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representation, or for any other cause affecting the validity of such will, such issue or issues shall, at the request in writing of either of the parties interested, be tried by a jury to be impaneled by the Probate Court as hereinafter provided; and if a jury trial be not demanded as in this section provided, the said issues shall be tried and determined by the Probate Court; when a jury trial shall be demanded, a request in writing therefor shall be filed with the Clerk of the Probate Court at least three days before the day set for the trial of the issues in the Probate Court; issue shall be deemed joined by the filing of the grounds of opposition as aforesaid with the Clerk of the Probate Court; such issue or issues of fact shall be made up and tried in the same manner as is or may be provided by law for the trial of issues of fact in other cases, and upon determination of such issue or issues of fact, the jury trying the same shall render a special verdict thereon; and whenever a trial by jury of any issue of fact joined in the Probate Court, in the manner provided in this act, shall be demanded in writing as in this section; *provided*, it shall be the duty of the Probate Court to cause to be summoned and impaneled a jury for the trial of such issue or issues of fact; the trial shall be had as in other civil cases, and, upon determining such issue or issues of fact, the jury trying the same shall render a special verdict upon each of the issues submitted to them, and the Probate Court shall proceed to admit said will to probate, or not, according to the facts found and the law, and a new trial may be had, and also appeal taken from such trial, verdict and judgment, as in other civil cases; and the act regulating proceedings in civil cases in the courts of justice in this Territory, when not inconsistent with or repugnant to the provisions of this act, shall be applicable to and govern the practice on trials of issue of fact by jury in the Probate Court provided for in this act.

SEC. 21. If the will is contested, all the subscribing witnesses who are present in the county and who are of sound mind must be produced and examined, and the death, absence or insanity of any of them shall be satisfactorily proved to the Court.

SEC. 22. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the Court

may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

SEC. 23. The testimony of each witness shall be reduced to writing and signed by him, and shall be deemed good evidence in any subsequent contests concerning the validity of the will or the sufficiency of the proof thereof if the witness be dead or has permanently removed from this Territory.

SEC. 24. If the Court shall be satisfied upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator at the time of the execution was of sound and disposing mind, and not under restraint, undue influence or fraudulent misrepresentation, a certificate of the proof and the facts found, signed by the Probate Judge and attested by the seal of the Court, shall be attached to the will.

SEC. 25. The will and the certificate of the proof thereof, together with the testimony which has been taken, shall be filed by the Clerk and recorded by him in a book to be provided for the purpose.

SEC. 26. The record of the will and the exemplification by the Clerk, in whose custody it may be, shall be received in evidence and be as effectual in all cases as the original would be if proved.

SEC. 27. All wills which shall have been duly proved and allowed in any State or Territory of the United States, or in any foreign country, State or Territory, may be allowed and recorded in the Probate Court of the county in which the testator shall have left any estate; *provided*, it has been executed in conformity with the laws of this Territory or of such foreign country, State or Territory.

SEC. 28. When a copy of the will, and the probate thereof duly authenticated, shall be produced by the executor or by any other person interested in the will, the Court shall appoint a time of hearing, and a notice shall be given in the same manner as in the case of an original will for probate.

SEC. 29. If, on the hearing, it shall appear to the Court that the instrument ought to be allowed as the will of the deceased, the authenticated copy shall be admitted to probate and recorded the same as in case of other wills, and the will shall

have the same force and effect as if it had been originally proved and allowed in the same court.

It shall be sufficient if it shall appear from the copies referred to in the preceding section that the will was executed in conformity with the laws of this Territory, and was proved and allowed in conformity with the laws of the State, Territory, district, foreign country or State, where the same was proved and allowed, and that the same was proved and allowed in conformity with the laws last referred to; the copy of the order, decree, judgment or certificate of the Court or officer having jurisdiction of the subject-matter, duly authenticated, showing that the will has been proved and allowed, shall be *prima facie* evidence, and also *prima facie* evidence of the death of the testator; but nothing herein shall be so construed as to exclude any other legal evidence.

SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same or the validity of the will.

For that purpose he shall file in the Court, before which the will was proved, a petition in writing containing his allegations against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

SEC. 31. Upon the filing of the petition, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators, with the will annexed, and to all the legatees named in the will residing in the Territory, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the Court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

SEC. 32. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citations having been made upon any person named therein, the Court shall proceed to hear the proofs of the parties. If any devisees or legatees named in the will be minors, and have no guardians, the Court shall appoint some attorney to represent them.

SEC. 33. If upon the hearing of the proofs of the parties the Court shall decide that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked.

SEC. 34. Upon the revocation being made, the powers of the executor or administrator with the will annexed shall cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

SEC. 35. The fees and expenses shall be paid by the party contesting the validity of the will, or the probate if the will or probate be confirmed.

If the probate be revoked, the party who shall have resisted the revocation shall pay the costs and expenses of the proceedings, or the same shall be paid out of the property of the deceased as the Court shall direct.

SEC. 36. If no person shall, within one year after the probate, contest the same or the validity of a will, the probate of the will shall be conclusive; saving to infants, married women and persons of unsound mind a like period of one year after their respective disabilities are removed.

SEC. 37. Whenever any will shall be lost or destroyed by accident or design, the Probate Court shall have power to take proof of the execution and validity of the will, to and establish the same, notice to all persons interested having been first given, as prescribed in regard to proofs of wills in other cases.

All the testimony given shall be reduced to writing and signed by the witnesses.

SEC. 38. No will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the life-time of the testator, nor unless its provisions be clearly and distinctly proved by at least two creditable witnesses.

SEC. 39. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the Probate Judge, under his hand and the seal of his Court, and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will annexed, shall be issued thereon, in the same manner as upon wills produced and duly proved.

SEC. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of

any previous will of the testator be granted, the Court shall have authority to restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Letters testamentary and of administration, and bonds of executors and administrators.

SEC. 41. When any will shall have been proved and allowed, the Probate Court shall issue letters thereon to the persons named in the will as executors, who are competent to discharge the trust, and who shall appear and qualify.

SEC. 42. No person shall be deemed competent to serve as executor who, at the time the will is proved, shall be:

First. Under the age of twenty-one years, except surviving husband or widow.

Second. Who shall be convicted of an infamous crime; or

Third. Who, upon proof, shall be adjudged by the Court incompetent to execute the duties of the trust by reason of drunkenness, improvidence or want of understanding or integrity.

If any such person be named as the sole executor in any will, or if all the persons named as executors are incompetent, or shall renounce or fail to apply for letters, or to appear and qualify, letters of administration, with the will annexed, shall be issued.

SEC. 43. Any person interested in a will may file objections, in writing, to the granting of letters testamentary to the persons named as executors, or any of them, and objections shall be heard and determined by the Court.

SEC. 44. When an unmarried woman who shall have been appointed executrix shall marry, her marriage shall extinguish her authority.

Where a married woman is nominated as executrix, she may be appointed and serve in every respect as if she were a *femme sole*.

SEC. 45. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator; but, on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator left unadministered, shall be issued.

SEC. 46. When a person under the age of twenty-one years shall be named executor, letters of administration, with the will annexed, shall be granted during the minority of the executor, unless there is another executor who shall accept the trust and quality; in which case the executor who shall accept the trust and qualify shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor.

SEC. 47. When all the executors named shall not be appointed by the Court, such as are appointed shall have the same authority to perform every act and discharge every trust required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together.

Where there are two executors or administrators, the acts of one alone shall be effectual if the other is absent from the Territory, or for any cause is laboring under any legal disability from serving, or if he should have given his co-executor or co-administrator authority under seal to act alone or for both, and when there are more than two executors or administrators the act of a majority shall be sufficient.

SEC. 48. Administrators, with the will annexed, shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

SEC. 49. Letters testamentary and of administration, with the will annexed, shall be signed by the clerk and be under the seal of the Court.

SEC. 50. Letters testamentary may be in substantially the following form :

Territory of Arizona, }
County of . }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Probate Court of the county of , C. D., who is named therein, is hereby appointed executor.

Witness: G. H., Clerk of the Probate Court of the county of , with the seal of the Court affixed the day of , A. D. 18 .

By order of the Court,

[SEAL.]

G. H., CLERK.

SEC. 51. Letters of administration, with the will annexed, may be substantially in the following form :

Territory of Arizona,)

County of . {

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Probate Court of the county of , and there being no executor named in the will (or as the case may be), C. D. is hereby appointed administrator with the will annexed.

Witness: G. H., Clerk of the Probate Court of the county of , with the seal of the Court affixed, the day of , A. D. 18 .

By order of the Court,

G. H., CLERK.

SEC. 52. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

First. The surviving husband or wife, or such person as he or she may request to have appointed.

Second. The children.

Third. The father or mother.

Fourth. The brothers.

Fifth. The sisters.

Sixth. The grandchildren.

Seventh. Any other of the kindred entitled to share in the distribution of the estate.

Eighth. The creditors.

Ninth. Any of the kindred not above enumerated within the fourth degree of consanguinity.

Tenth. The public administrator.

Eleventh. Any person or persons legally competent; *provided*, that when there was any partnership existing between the intestate at the time of his death and any other person, the surviving partner shall in no case be appointed administrator of the estate of such intestate.

SEC. 53. When there shall be several persons claiming and equally entitled to the administration, males shall be preferred to females, and relatives of the whole blood to those of half blood.

SEC. 54. When there are several persons equally entitled to the administration the Court may, in its discretion, grant letters to one or more of them.

SEC. 55. No person shall be entitled to letters of administration who shall be,

First. Under the age twenty-one years, except a surviving husband or widow.

Second. Who shall have been convicted of any infamous crime; or,

Third. Who, upon proof, shall be adjudged by the Court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of integrity or understanding.

SEC. 56. When any unmarried woman who shall have been appointed administratrix shall marry, her marriage shall extinguish her authority. A married woman shall not be appointed administratrix. Administration shall not be granted to any person at the request of a married woman.

SEC. 57. If any person entitled to administration shall be a minor, administration shall be granted to his or to her guardian if competent.

SEC. 58. Applications for letters of administration shall be made by petition in writing, signed by the applicant, or his counsel, and filed with the Clerk of the Court. The petition must state the facts essential to give the Court jurisdiction of the case, and when the same is known to the administrator he shall state the names, ages and residence of the heirs of the deceased, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and the same shall be afterward proved in the cause of administration, the decree of administration and the subsequent proceedings shall not, on account of such want of jurisdictional averments, be held void.

SEC. 59. Letters of administration shall only be granted at a regular term of the Court or at special term appointed by the Judge for the hearing of the application.

SEC. 60. When any petition praying for letters of administration has been filed, the Clerk shall give notice thereof, by causing notices to be posted in at least three public places in the county, one of which shall be at the place where the Court is held. The notice shall state the name of the deceased, the name of the applicant, and the term of the Court at which the application will be heard.

Such notice shall be given at least ten days before the hearing.

SEC. 61. Any person interested may contest the application by filing a written opposition thereto, on the ground of the incompetency of the applicant, or may assert his own rights to

the administration, and pray that letters be issued to himself, after proper petition filed and due notice given.

SEC. 62. On the hearing, it being first proved that notice has been given according to law, the Court shall proceed to hear the allegations and proof of the parties, and to order the issuance of letters of administration as the case may require.

SEC. 63. An entry in the minutes of the Court that proof was made that notice had been given according to law shall be conclusive evidence of the fact of such notice.

SEC. 64. Letters of administration may be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuance of letters to themselves.

SEC. 65. Before letters of administration shall be granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate shall be proved by the testimony of the applicant, and the Court may also examine any other person concerning the time, place and manner of the death, the place of his residence at the time of his death, the value and character of his property, and whether or not the deceased left any will, and may compel any person to attend as a witness for that purpose.

SEC. 66. Administration may be granted to one or more competent persons, although not entitled to the same, at the request of the person entitled. The request shall be in writing, and shall be filed in the Court. When the person entitled is a non-resident of the Territory, affidavits or depositions, taken *ex parte*, before any officer authorized by the laws of this Territory to take acknowledgments and administer oaths out of this Territory, may be received as *prima facie* evidence of the identity of the party, if free from reasonable suspicion, and the fact be established to the satisfaction of the Court.

SEC. 67. When letters of administration have been granted to any other person than the surviving husband or wife, the child, the father, mother, brother or sister of the intestate, any one of them may obtain the revocation of the letters, and shall be entitled to the administration, by presenting to the Probate Court a petition praying the revocation, and that letters of administration may be issued to him or her.

SEC. 68. When any such petition is filed, the Clerk shall issue a citation to the administrator, to appear and answer the petition at the next regular term of the Court, or at any special term that may be appointed by the Judge.

SEC. 69. At the time appointed, the citation having been duly served and returned, the Court shall proceed to hear the allegations and proofs of the parties, and if the right of the applicant is established, and the Court shall deem it for the interest of the estate, and he or she be competent, letters of administration shall be granted to the applicant, and the letters of the former administrator be revoked.

SEC. 70. The surviving husband or wife, where letters of administration have been granted to a child, to the father, to a brother, or to a sister of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his or her prior right and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in the three preceding sections.

SEC. 71. Letters of administration shall be signed by the Clerk, and be under the seal of the Court, and may be in substantially the following form:

Territory of Arizona, }
County of . }

C. D. is hereby appointed administrator of the estate of A. B., deceased.

Witness: G. H., Clerk of the Probate Court of the county of
, with the seal of the Court affixed, the day
of , A. D. 18 .

By order of the Court,

[SEAL.]

G. H., CLERK.

SEC. 72. Before letters testamentary, or of administration, shall be issued to the executor or administrator, he shall take and subscribe an oath or affirmation before any officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator; such oath shall be attached to the letters; all letters testamentary and of administration issued to, and all bonds executed by executors or administrators, with the affidavits and certificate thereon, as provided for in this act, shall be forthwith recorded by the Clerk of the Court having jurisdiction of the estate, respectively, in a book to be kept by him in his office for that purpose, and the said records and duly certified copies taken therefrom shall

have the same force and effect in all cases whatsoever as the original papers would have.

SEC. 73. Every person to whom letters testamentary or of administration shall have been directed to issue shall, before receiving the letters, execute a bond to the Territory of Arizona, with two or more sufficient sureties, to be approved by the Probate Judge; in form, the bond shall be joint and several, and the penalty shall not be less than twice the value of the personal property belonging to the estate, which value shall be ascertained by the Probate Judge, by the examination on oath of the party applying, and of any other persons he may think proper to examine; the Probate Judge shall require an additional bond, whenever the sale of any real estate belonging to an estate is ordered by him. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law; he shall also require bond and sufficient surety for the annual rents, issues and profits of all real estate in his charge as such executor or administrator to be approved by the Probate Judge.

SEC. 74. When two or more persons shall be appointed executors or administrators, the Probate Judge shall take a separate bond from each of them.

SEC. 75. The bond shall not be void upon the first recovery, but may be sued upon from time to time by any person aggrieved in his own name until the whole penalty is exhausted.

SEC. 76. In all cases where bonds are required by this act, the sureties must justify on oath before some officer authorized to administer oaths, to the effect that they are householders or freeholders, residents within the Territory, and worth the amount justified to over and above their debts and liabilities, exclusive of property exempt from execution; such justification shall be in writing signed by persons justifying, and certified to by the officer who takes the same, and attached to and filed with the bond; whenever the penal sum of the bond amounts to more than two thousand dollars, the sureties may be allowed to become liable for portions of said penal sum, making in the aggregate the whole penal sum of the bond. Before the Probate Judge approves any bond required by said act, he may of his own motion, or at any time after the approval of such bond, upon the motion of any person interested in said estate, supported by affidavit, that any one, or all of such securities, are not worth as much as they have justified to, order a citation to issue, requiring such security or securities to appear

before him, at a particular time and place, to testify touching his or their property, and its value, and the Judge shall, at the time such citation is issued, cause a notice to be issued to the executor or administrator, and requiring his appearance at the return of said citation. Upon the return of the citation, the Judge may swear the securities and such witnesses as may be produced, touching the property of such securities and its value, and if, upon such investigation, the Judge is satisfied that the bond is insufficient, he may require sufficient additional security, within such time as may be reasonable, not less than five days.

If sufficient security is not given within the time fixed by the Judge's order, the right of such executor or administrator to the administration shall cease and the person next entitled to the administration on the estate, who will execute a sufficient bond, shall be appointed the administrator.

SEC. 77. When it is expressly provided in the will of a testator that no bond shall be required of the executor, letters testamentary may issue, and sales of real estate be made and confirmed without any bond having been given; but an executor, to whom letters have been issued without bond may, at any time afterward, whenever it may be shown from any cause to be necessary or proper, be required to appear and file a bond, as in other cases.

SEC. 78. Whenever any person interested in any estate shall discover that the sureties of any executor or administrator have become or are becoming insolvent, that they have removed or are about to remove from the Territory, or that, from any other cause, the bond is insufficient, he may apply by petition to the Probate Judge and require that further security be given.

SEC. 79. If the Probate Judge shall be satisfied that the matter requires investigation, a citation shall be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally on the executor or administrator, at least ten days before the return day. If he shall have absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence.

SEC. 80. On the return of the citation, or at such other time as the Judge shall appoint, he shall proceed to hear the proofs and allegations of the parties. If it shall satisfactorily

appear that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time, not exceeding ten days.

SEC. 81. If the executor or administrator neglect to comply with the order within the time prescribed, the Judge shall, by order, revoke his letters, and his authority shall thereupon cease.

SEC. 82. When a petition is presented praying that an executor or administrator be required to give further security, and when it shall also be alleged on oath or affirmation that the executor or administrator is wasting the property of the estate, the Judge may, by order, suspend his powers until the matter can be heard and determined.

SEC. 83. When it shall come to his knowledge that the bond of any executor or administrator is, from any cause, insufficient it shall be the duty of the Probate Judge, without any application, to cause him to be cited to appear and show cause why he should not give further security, and to proceed thereon as upon the application of any person interested.

SEC. 84. When either or all of the sureties of any executor or administrator shall desire to be released from responsibility, on account of his future acts, they may make application to the Probate Court or Judge for relief, and the Court or Judge shall cause a citation to the executor or administrator to be issued, requiring him to appear at a time and place to be therein specified, and to give other security, which citation shall be served personally. If he has absconded, or if he has left or removed from the Territory, or if he cannot be found after due diligence and inquiry, service may be made by leaving a copy at his last place of residence, if the same can be ascertained, and if the same cannot be ascertained, then by such publication as the Court or Probate Judge may order.

SEC. 85. If new sureties be given to the satisfaction of the Judge, he may thereupon make an order that the surety or sureties who applied for relief shall not be liable, on their bond, for any subsequent act, default or misconduct of the executor or administrator.

SEC. 86. If the executor or administrator neglect or refuse to give new sureties to the satisfaction of the Judge, on the return of the citation, or within such reasonable time as the Judge

shall allow, not exceeding five days, he shall by order revoke the letters granted.

SEC. 87. The applications, authorized by the nine preceding sections of this chapter, may be heard and determined out of term-time. All orders made therein shall be entered upon the minutes of the Court.

SEC. 88. When there shall be a delay in granting letters testamentary or of administration from any cause, or when such letters shall have been granted irregularly, or no sufficient bond shall have been filed as required by law, or when no application shall have been made for such letters, the Probate Judge shall appoint a special administrator to collect and take charge of the estate of the deceased, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate; or he may direct the public administrator of his county to take charge of the estate.

SEC. 89. The appointment may be made out of term-time, and without notice, and shall be made by entry upon the minutes of the Court, which entry shall specify the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the Clerk shall issue letters of administration to such person, in conformity with the order.

SEC. 90. In making the appointment of a special administrator, the Probate Judge shall give preference to the person or persons entitled to letters testamentary or of administration. But no appeal shall be allowed from the appointment.

SEC. 91. Before any letters shall issue to any special administrator, he shall give bond in such sum as the Probate Judge may direct, with sureties to the satisfaction of said Judge, conditioned for the faithful performance of his duties.

SEC. 92. The special administrator shall collect and preserve for the executor or administrator, all the goods, chattels, debts and effects of the deceased, all incomes, rents, issues and profits, claims and demands of the estate, shall take the charge and management of, enter upon, and preserve from damage, waste and injury, the real estate, and for any such and all necessary purposes, may commence and maintain, or defend suits and other legal proceedings as an administrator; he may sell such perishable property as the Probate Court may order

to be sold, and may exercise such other powers as may have been conferred upon him by his appointment, but in no case shall he be liable to an action by any creditor on a claim against the deceased.

SEC. 93. When letters testamentary or of administration on the estate of the deceased have been granted, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the property and effects of the deceased in his hands; and the executor or administrator may be permitted to prosecute to final judgment any suit commenced by the special administrator.

SEC. 94. The special administrator shall also render an account, on oath, of his proceedings, in like manner as other administrators are required to do.

SEC. 95. Whenever an executor or administrator shall die, or his letters be revoked, and the circumstances of the estate require the immediate appointment of an administrator, the Probate Judge may appoint a special administrator as provided in the preceding sections.

SEC. 96. In case any one of several executors or administrators, to whom letters shall have been granted, shall die, become lunatic, be convicted of an infamous offense, or otherwise become incapable of executing the trust, or in case the letters testamentary or of administration shall be revoked or annulled according to law, with respect to any one executor or administrator, the remaining executor or administrator shall proceed and complete the execution of the will or administration.

SEC. 97. If all such executors or administrators shall die or become incapable, or the power and authority of all of them shall be revoked, according to law, the Probate Court shall issue letters of administration, with the will annexed, or otherwise, to the widow or next of kin or others, in the same manner as is directed in relation to original letters of administration. The administrator so appointed shall give bond in like penalty, with like sureties and conditions as hereinbefore required of administrators, and shall have like power and authority.

SEC. 98. If, after granting letters of administration on the ground of intestacy, a will of the deceased shall be duly proved and allowed by the Court, the letters of administration shall be revoked, and the power of the administrator shall cease, and

he shall render an account of his administration within such time as the Court shall direct.

SEC. 99. In such case the executor of the will, or the administrator with the will annexed, shall be entitled to demand, sue for and collect all the rights, goods, chattels and effects of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

SEC. 100. Any executor or administrator may, at any time, by writing, filed in the Probate Court, resign his appointment, having first settled his accounts and delivered up all the estate to such person as the Court shall appoint; *provided*, if, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested in the estate shall, in the opinion of the Court, require it, the Court may, at any time before such settlement of accounts and delivering up of the estate shall have been completed, revoke the powers or the letters testamentary or of administration of such executor or administrator, and appoint in his stead an administrator, either special or general, as the case may require, and in the same manner as is directed in relation to original letters of administration. The liability of the out-going executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released or affected by such appointment of a special or general administrator in his stead.

SEC. 101. All acts of an administrator as such, before the revocation of his letters testamentary, or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

SEC. 102. A transcript from the minutes of the Court showing the appointment of any person as executor or administrator, together with the certificate of the Clerk under his hand and the seal of his Court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

SEC. 103. No Probate Court shall admit to probate any will, or grant letters testamentary or of administration in any case

where the Judge of such Court shall be interested as next of kin to the deceased, or as a legatee or devisee under the will, or when he shall be named as executor or trustee in the will, or shall be in any manner interested or disqualified from acting.

SEC. 104. When the Probate Court of any county shall be precluded from admitting to probate a will, or granting letters testamentary or of administration, from any of the causes mentioned in the preceding section, the will may be proved and letters testamentary or of administration may be granted, and all proceedings necessary thereto or consequent thereon may be had in the Probate Court of an adjoining county, and the Probate Judge and Probate Court of such adjoining county shall be vested with as full and complete power, authority and jurisdiction in the premises as would pertain to them if the testator or intestate had been a resident of such adjoining county at the time of his death, and shall retain jurisdiction in all subsequent proceedings in relation to the estate.

Of the inventory and collection of the effects of deceased persons.

SEC. 105. Every executor or administrator shall make and return to the Court, at its first term after his appointment, a true inventory and appraisement of all the estate of the deceased which shall have come to his possession or knowledge.

SEC. 106. For the purpose of making the appraisement, the Probate Judge shall appoint three disinterested persons, any two of whom may act, and who shall be entitled to receive a reasonable compensation for their services, to be allowed by the Court; their compensation as allowed shall be in the form of a bill of items of their services, which shall be sworn to by them and filed with the inventory, and which shall not exceed three dollars per day; if any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed, either by the Probate Judge having jurisdiction of the case, or by the Probate Judge of such county.

SEC. 107. Before proceeding to the execution of their duty, the appraisers, before any officers authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly and impartially appraise the property which shall be exhibited to them according to the best of their knowledge and ability. They shall then proceed to estimate and appraise the property; each article shall be set down separately, with the value thereof in dollars

and cents in figures opposite to the articles respectively. The inventory shall contain all the estate of the deceased, real and personal, a statement of all debts, partnerships and other interests, bonds, mortgages, notes and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collectible on each debt, interest or security. The inventory shall show, so far as the same can be ascertained by the executor or the administrator, what portion of the property is community property, and what portion is the separate property of the deceased.

SEC. 108. The inventory shall also contain an account of all moneys belonging to the deceased which shall have come to the hands of the executor or administrator, and if none shall have come to his hands the fact shall be so stated in the inventory; if the whole estate consists of money there need be no appraisal, but an inventory shall be made and returned as in other cases.

SEC. 109. The naming any person executor in a will shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same, as for so much money in his hands at the time the debt or demand becomes due.

SEC. 110. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in the payment of his debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

SEC. 111. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe an oath before the Probate Judge, or the Clerk of the Court, or any officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the deceased which has come to his knowledge and possession, and particularly of all money belonging to the deceased, and of all just claims of the deceased against the executor or administrator. The oath shall be indorsed upon, or annexed to, the inventory.

SEC. 112. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding two months, as the Court shall, for reasonable cause, allow, the Court shall revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate by his neglect.

SEC. 113. Whenever property not mentioned in any inventory that shall have been made shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned within two months after the discovery thereof; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

SEC. 114. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate, until the estate shall be settled, or until delivered over by order of the Court or Probate Judge.

SEC. 115. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses, and if the goods, chattels, rights and credits, in the hands of the executor or administrator, shall not be sufficient to pay the debts of deceased, and the expenses of administration, and the allowances to the family of the deceased, the whole of the real estate may be sold for that purpose by the executor or administrator, in the manner prescribed by this act.

SEC. 116. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, he shall stand chargeable and be liable to the action of the executor or administrator of the estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

SEC. 117. If any executor or administrator, heir or legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the Probate Judge, on oath, that any person is suspected to have concealed, embezzled, conveyed away, or disposed of, any moneys, goods or chattels of the deceased, or that he has in his possession or knowledge any deeds or conveyances, bonds, contracts, or other writings,

which contain evidences of, or tend to disclose the right, title, interest, or claim of the deceased, to any real or personal estate or any claim or demand, or any last will of the deceased, the said Judge may cite such person to appear before the Probate Court, and may examine him on oath, upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined either before Probate Court of the county where he may be found, or before the Court issuing the order or citation. But if, in the latter case, he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

SEC. 118. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, or her, touching the matters of such complaint, the Court may, by warrant for that purpose, commit him or her to the county jail, there to remain in close custody until he, or she, submit to the order of the Court or be discharged according to law; and if, upon such examination, it shall appear that such person has concealed, embezzled, smuggled, conveyed away, or disposed of, any moneys, goods or chattels of the deceased, or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings, which contain evidences of, or tend to disclose the right, title, interest or claim of the deceased, to any real, or personal estate, claim or demand, or any lost will of the deceased, the Probate Court may make an order requiring such person to disclose his knowledge thereof to said administrator, and may commit said person to the county jail, there to remain until said order is complied with or be discharged according to law; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined and filed in the Probate Court. The order for such disclosure, made upon such examination, shall be *prima facie* evidence of the right of such administrator to such property in any action that may be brought for the recovery thereof; and any judgment recovered therein shall be for double the value of the property as assessed by the Court or jury, or for return of the property and damages, in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

SEC. 119. The Probate Judge, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been intrusted with any part of the estate of the deceased person, to appear before such Court, and may require such person to render a full account, on oath, of any moneys,

goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and answer such account, the Court may proceed against him as provided in the preceding section.

Of the provisions for the support of the family.

SEC. 120. When a person shall die leaving a widow or minor child or children, the widow, child or children shall, until letters have been granted and the inventory has been returned, be entitled to remain in possession of the homestead and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the Probate Judge.

SEC. 121. Upon the return of the inventory, or at any subsequent time during the administration, the Court or Probate Judge may, of his own motion, or on application, set apart, for the use of the family of the deceased, all personal property which is by law exempt from execution, and the homestead, as designated by section one hundred and twenty-four of this act.

SEC. 122. If the whole property exempt by law be not included in the inventory, and if the amount set apart be insufficient for the support of the widow and child or children, the Probate Court shall make such reasonable allowances out of the estate as shall be necessary for the maintenance of the family according to their circumstances, during the progress of the settlement of the estate; which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

SEC. 123. Any allowance made by the Court or Judge, in accordance with the provisions of this chapter, shall be paid by the administrator, in preference to all other charges, except funeral charges and expenses of administration:

SEC. 124. The following shall be set apart for the use of the widow or minor child or children, and shall not be subject to administration. *First.* All spinning wheels, weaving looms and stoves put up or kept for use. *Second.* The family Bible, family pictures, and school books and library, not exceeding in value two hundred dollars. *Third.* All goats or sheep to the number of twenty, with their fleeces, and the yarn or cloth

manufactured from the same; two cows, five swine, with the necessary food for them for six months. *Fourth.* All wearing apparel of the widow and children, and all household goods, furniture and utensils not exceeding in value seven hundred and fifty dollars. *Fifth.* The homestead, consisting of any quantity of land not exceeding twenty acres, and the dwelling-house thereon, with its appurtenances, not being included in any incorporated town or city, with water rights or privileges sufficient to irrigate the same, or, instead thereof, a quantity of land not exceeding one lot in any incorporated town or city, and the dwelling-house thereon and its appurtenances, to be selected by the widow, or if there be no widow, to be designated by the Probate Judge, and not to exceed in any case more than five thousand dollars in value.

SEC. 125. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor child, such property shall be the property of the widow; if he shall have left also a minor child or children, the one-half of such property shall belong to the widow, and the remainder to the child, or in equal shares to the children, if there be more than one; if there be no widow, the whole shall belong to the minor child or children.

SEC. 126. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of five hundred dollars, the Probate Court by a decree for that purpose shall assign for the use and support of the widow and minor children of the estate, or for the support of the minor child or children, if there be no widow, the whole of the estate, after the payment of the funeral charges and expenses of the administration, and there shall be no further proceedings in the administration unless further estates be discovered; and, when it shall appear that the value of the whole estate does not exceed the sum of one thousand dollars, it shall be in the discretion of the Probate Court to dispense with the regular proceedings or any part thereof, prescribed in this act, for the purpose of a summary administration of the estate, and to order distribution of the estate at the end of six months after the issuance of letters; *provided*, that notice to creditors shall have been given to present their claims within four months after the first publication of such notice.

SEC. 127. If the widow has a maintenance derived from her own property, equal to the portion set apart to her by the one

hundred and twenty-fifth and one hundred and twenty-sixth sections of this act, the whole property so set apart shall go to the minor children.

Of claims against the estate.

SEC. 128. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one, if not, then in such newspaper as may be designated by the Court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them, with the necessary vouchers, within ten months after the first publication of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the Judge or Court shall direct, but not less than once a week for four weeks. The Court or Judge may also direct additional notice by publication or posting. In case such executor or administrator resign or be removed, before the expiration of the ten months after the first publication of such notice, his successor shall give such notice only for the unexpired portion of the ten months.

SEC. 129. After the notice shall have been published, a copy thereof, together with an affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator.

SEC. 130. If a claim be not presented within ten months after the first publication of the notice, it shall be barred forever; *provided*, if it be not then due, or if it be contingent, it may be presented within ten months after it shall become due or absolute; and *provided, further*, that when it shall be made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the Probate Judge, that the claimant had no notice as provided in the act, by reason of being out of the Territory, it may be presented any time before a decree of distribution is entered.

SEC. 131. Every claim presented to the executor or administrator shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no off-sets to the same, to the knowledge of the claimant or other affiant; *provided*, that when the affidavit is made by any other person than the claimant, he shall set forth in the affidavit the reasons it is not made by the claimant.

The oath may be taken before any officer authorized to take oaths. The executor or administrator may also require satisfactory vouchers, or proofs, to be produced in support of the claim. The amount of interest shall be computed, and included in the statement of the claim, and the rate of interest determined. In case the estate is insolvent, no claim contracted after the passage of this act shall bear greater interest than ten per cent per annum from and after the time of issuing letters. Any Probate Judge may present a claim against the estate of any deceased person for allowance to the executor or administrator of such estate; and, if the executor or administrator allows such claim, he shall, in writing, designate some Probate Judge of an adjoining county; and the Probate Judge, so designated by the executor or administrator, shall, upon the presentation of such claim to him, have the same power to allow or reject it as he would have if the will had been proved or administration granted in his own county; and the Probate Judge presenting such claim shall, in case of its rejection by the executor or administrator, or by such Probate Judge as shall have acted upon it, have the same right to sue in a proper Court for its recovery as other persons have when their claims against an estate are rejected.

SEC. 132. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof; if he allow the claim, it shall be presented to the Probate Judge for his approval, who shall, in the same manner, indorse upon it his allowance or rejection.

If the executor or administrator, or the Judge, refuse or neglect to indorse such allowance or rejection, for ten days after the claim shall have been presented to him, such refusal or neglect may be deemed equivalent to a rejection; and, if the presentation be made by a Notary, the certificate of such Notary, under seal, shall be *prima facie* evidence of such presentment and rejection.

If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same may be held valid, though acted upon by the executor or administrator, and by the Judge, after the expiration of such time.

SEC. 133. Every claim which has been allowed by the executor or administrator, and approved by the Probate Judge shall, within thirty days thereafter, be filed in the Probate Court, and be ranked among the acknowledged debts of the

estate to be paid in due course of administration. If the claim be founded on a bond, bill, note or other instrument, the original instrument shall be presented, and the allowance and approval or rejection shall be indorsed thereon, or be attached thereto. If the claim, or any part thereof, be secured by a mortgage or other lien, such mortgage or other evidence of liens shall be attached to the claim and filed therewith, unless the same be recorded in the office of the Recorder of the county in which the land lies, in which case it shall be sufficient to describe the mortgage or lien, and refer to the date, volume and page of its record. And in all cases it shall be permitted to the claimant to withdraw his claim from file, on leaving a certified copy with a receipt indorsed thereon by himself or his agent. A brief description of every claim filed shall be entered by the Clerk in the register, showing the name of the claimant, the amount and character of the claim, right of interest, and the date of approval; *provided*, if such original instrument be lost or destroyed, then in lieu thereof the claimant shall be required to file his affidavit particularly describing such instrument, and stating the loss or destruction thereof, upon which affidavit the indorsement hereinbefore mentioned shall be made.

Sec. 134. When a claim is rejected either by the executor or administrator, or the Probate Judge, the holder shall bring suit in the proper Court against the executor or administrator within three months after date of its rejection, if it be then due, or within three months after it becomes due; otherwise the claim shall be forever barred.

Sec. 135. No claim shall be allowed by the executor or administrator, or by the Probate Judge, which is barred by the Statute of Limitations. When a claim shall be presented to the Probate Judge for his allowance he may, in his discretion, examine the claimant and other persons on oath touching the validity of the claim, and may hear any other legal evidence in relation thereto.

Sec. 136. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

Sec. 137. The time during which there shall be a vacancy in the administration shall not be included in any limitation herein prescribed.

Sec. 138. If an action be pending against the testator or intestate at the time of his death, the plaintiff shall in like

manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases, and no recovery shall be had in the action unless proof be made of the presentment.

SEC. 139. Whenever any claim shall be presented to any executor or administrator, or to the Probate Judge, and he shall be willing to allow the same in part, he shall state in his indorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover the costs in any action which he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

Section one hundred and thirty-nine amended by inserting the word "not" after the word "shall" in the seventh line.

SEC. 140. The effect of any judgment rendered against any executor or administrator, upon any claim for money against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the Probate Judge, and the judgment shall be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified transcript of the judgment shall be filed in the Probate Court.

No execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

SEC. 141. When any judgment has been rendered against the testator or intestate in his life, no execution shall issue thereon after his death; but a certified copy of such judgment shall be presented to the executor or administrator, and be allowed and filed or rejected, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration; *provided*, however, that if the execution shall have been actually levied upon any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands. The executor or administrator may, however, require the affidavit of the claimant, or other satisfactory proof, that the judgment, or any portion thereof, is justly due and unsatisfied.

SEC. 142. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an

agreement in writing with the claimant, to refer the matter in controversy to some disinterested person to be approved by the Probate Judge, or, if the parties consent, a reference may be had in the Probate Court, and the report of the referee, if confirmed, shall establish or reject the claim, the same as if it had been allowed or rejected by the executor or administrator, and the Probate Judge.

SEC. 143. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the Court in which his appointment shall have been entered; the same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation, and be subject to the same control, as in other cases of reference. The Court may remove the referee, or appoint another in his place, or may set aside or confirm the report, and adjudge costs, as in actions against executors or administrators, and the judgment of the Court thereon shall be valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

SEC. 144. When a judgment has been recovered with costs against any executor or administrator, the executor or administrator shall be individually liable for the costs, but they shall be allowed him in his administration accounts, unless it shall appear that the suit or proceeding in which the costs were taxed shall have been prosecuted or resisted without just cause.

SEC. 145. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection to the Probate Judge, and its allowance by the Judge shall be sufficient evidence of its correctness.

SEC. 146. If any executor shall reject for two months after his appointment to give notice to creditors, as prescribed by this act, it shall be the duty of the Court to revoke his letters.

SEC. 147. At the same term at which he is required to return his inventory, the executor or administrator shall also return a statement of all claims against the estate which shall have been presented to him, when required by the Court, and from term to term thereafter shall present a statement of claims subsequently presented to him. In all such statements he shall designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

Sales of property by executors or administrators.

SEC. 148. No sale of any property of an estate of a deceased person shall be valid unless made under order of the Probate Court, except as otherwise provided in this act or other acts.

SEC. 149. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file his written objections, which shall be heard and determined.

SEC. 150. At any time after receiving letters the executor or administrator, or special administrator, may apply to the Court or Judge for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased.

If there be a delay in obtaining such order, such property may be sold without an order of sale; *provided*, that the executor or administrator, or special administrator, shall be held responsible for such property unless, after making a sworn return, and on a proper showing, the Court shall approve such sale. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment or of the expenses of the administration, the executor or the administrator may also apply for an order to sell so much of the personal property as shall be necessary. Upon filing his petition, notice of at least five days shall be given of the hearing of the application, either by posting notices or by advertising. He may make a similar application, either in vacation or term, from time to time, so long as any personal property remains in his hands, and a sale thereof is necessary; and if (section 150 amended by inserting the words "he shall" after the word "if" in the twenty-eighth line) deem it for the best interest of the estate, he may, at any time after the filing of the inventory, make an application in like manner, and after giving like notice, for an order to sell the whole of the personal property belonging to the estate.

Perishable property of any estate may be sold as provided by law, and shall include all personal property which is likely to decrease in value, or become worse by being kept, or is subject to loss or expense, so that it shall appear to be for the best interest of the estate that the same should be sold without delay. Partnership interest, or interests belonging to any estate by virtue of any partnership formerly existing, and choses in action, may be sold in the same manner as other personal property, when it shall appear to be for the best interest of the estate.

Before confirming the sale of any partnership interest, whether made to the surviving partner or partners, or to any other person, the Court or Judge shall carefully inquire into the condition of the partnership affairs, and shall examine the surviving partner or partners, if he or they shall be in the county and able to be present in Court, and may also examine any other witnesses, and no such sale shall be confirmed unless the same shall appear to be for the best interest of the estate.

SEC. 151. If it appears that a sale is necessary, or for the best interest of the estate, the Court or Judge shall order it to be made. In making such sales, the Court or Judge shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specially bequeathed, to be first sold; articles so bequeathed shall not be sold until the residue of the personal estate has been applied to the payments of the debts.

SEC. 152. The sale of personal property shall be made at public auction, and after public notice, given for at least ten days, unless for good reason shown, the Probate Court or Judge shall order a private sale, or a shorter notice; but no private sale shall be effectual for any purpose till the same shall be approved by the Probate Judge. Public sales of such property shall be made at the court-house door, at the residence of the deceased, or at some other public place, to be mentioned in the notice, and no sale shall be made of any property which is not present at the time of selling.

SEC. 153. The notice shall be given by notices posted in three public places in the county, or by publication in a newspaper, if the Judge so order, in which shall be specified the time and place of sale.

SEC. 154. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, the debts that may be outstanding against the deceased, and the debts, expenses, and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the Probate Court.

Whenever it shall appear from the inventory of the estate of any deceased person that said estate consists, in whole or in part, of any mines, or interest in mines, or of shares, interests, or stocks in any mining corporation, such mines, interests, stocks or shares, may be sold under the order of the Probate Court having jurisdiction of said estate, and as hereinafter provided. The executor, administrator, or any heir at law of such estate, any creditor having a claim against the estate, any partner or member of any mining company in which such interests

or shares are held, the President of any mining corporation in which stocks or shares are held or owned by such estate may file in the Probate Court a petition in writing, setting forth therein the general facts of such estate being then in due cause of administration, and particularly describing the mine, interest, stock or shares owned by such estate, and which it is desired to sell.

Such petition shall further set forth particularly the condition and situation; after such order of sale shall be made by the Probate Judge, all further proceedings for the sale of such mining property shall be in conformity with the laws providing for the sale of other real property under the orders of the Probate Court, and whenever such mining interest shall consist of stocks or shares held and owned as personalty, such further proceedings for the sale thereof, after the order of the sale, shall be in conformity with the law providing for the sale of the other personal property of an estate.

SEC. 155. To obtain such order he shall present a petition to the Probate Court, or to the Judge at Chambers, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of, the debts outstanding against the deceased, as far as can be ascertained or estimated, the amount due upon the family allowance, or that will be due after the same shall have been in force for one year, the debts, expenses and charges of the administration already accrued, and an estimate of what will or may accrue during the administration, a description of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the intestate estate has acquired any interest, and the condition and value of the respective portions and lots, and whether the same be community or separate property, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same; if the inventory and appraisement on file contain a full description of the personal estate of the deceased, and of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the estate has acquired any interest, such inventory, by a proper reference, may be made a part of the petition for a description of the personal estate or real estate, or both, and if the same be full as to all property, except property subsequently discovered, or profits subsequently received, such reference may be had to the inventory, and the additional property may be set forth in the petition; if all the matters above enumerated cannot be ascertained, the same shall be so stated in the petition.

SEC. 156. If it shall appear to the Court or Judge by such petition, that it is necessary to sell the whole or some portion of the real estate for the purposes mentioned in section one hundred and fifty-five of this act, or any or either of them, such petition shall be filed and an order shall thereupon be made, directing all persons interested in the estate to appear before the Court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the deceased as shall be necessary.

SEC. 157. A copy of such order to show cause shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in some newspaper as the Court or Judge shall order, or by posting notices in at least three public places in the county for the same period; *provided*, however, if all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

SEC. 158. The Probate Court, at the time and place appointed in such order, or at such other time as the hearing may be adjourned to, upon satisfactory proof of the due service or publication of a copy of the order by affidavit or otherwise, or upon filing the consent in writing to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent is not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application. All claims against the deceased not before presented, *provided* the period of presentation as provided in this act shall not have elapsed, may be presented and shall be passed upon at the hearing, and if approved by the executor or administrator and the Probate Judge, shall not be subject to review except on appeal.

SEC. 159. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, a copy of the order shall be served upon the guardian at least ten days before the actual hearing. If they have no guardian the Court or Judge shall, at the time of filing the petition, or before proceeding to act upon the petition, appoint some disinterested person their attorney, for the sole purpose of appearing for them and taking care of their interest in the proceedings. The Court may also upon the hearing, if it be deemed necessary, appoint such attorney for the heirs or devisees, if they are

unrepresented, whether minors or otherwise, and may likewise appoint an attorney for the creditors, if they are unrepresented. If such guardians of the minors, or such attorney for minors or others, appear on the hearing, such appearance shall be evidence of service of notice upon such guardian or attorney.

SEC. 160. The executor or administrator may be examined on oath, and witnesses may be examined by either party, and process to compel their attendance and testimony may be issued by the Probate Judge, in the same manner and with like effect as in other causes.

SEC. 161. If it shall appear to the Court that it is necessary to sell a part of the real estate, and that by a sale of such part the residue of such real estate, or some specific part thereof, would be greatly injured, or diminished in value, or subjected to expense, or rendered unprofitable, or that, after any such sale, any such residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees as clearly to render it for the best interest of all concerned that the same should be sold, the Court may authorize the sale of the whole estate, or of any part thereof, as may be necessary and for the best interest of all concerned. And the Court may confirm such sale of the whole estate or of a specific part thereof; *provided*, the necessity or expediency of such sale, as already defined in this section, be set forth in the return of sale, and be established on the hearing; and the sale so confirmed shall be valid.

SEC. 162. If the court shall be satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate, is necessary for any of the causes mentioned in section one hundred and fifty-five and section one hundred and sixty-one of this act, or if such sale be assented to by all the persons interested, an order of sale shall be made authorizing the executor or administrator to sell the whole, or so much and such parts of the real estate described in the petition as the Court shall judge necessary or beneficial.

SEC. 163. The order of sale shall specify the lands to be sold and the term of sale, which may be for cash or on a credit not exceeding one year, payable in gross or installments, with interest, as the Court may direct.

The tract or tracts of land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most

beneficial to said estate, unless the Court shall otherwise specially direct. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the Court shall order that part descended to heirs to be sold before that so devised.

Every such sale shall be ordered to be made at public auction, unless in the opinion of the Court it would benefit the said estate to sell the whole, or some part of such real estate, at private sale, in which case the Court, if the same is asked for in the petition, may order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for said estate. If the executor or administrator shall neglect or refuse to make a sale, under the order of sale, he may be compelled to proceed to sell by order of the Court, made on motion, after due notice, by any party interested.

SEC. 164. If the executor or administrator neglect to apply for an order of sale whenever it may be necessary, any person interested in the estate may make application therefor in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator, before the hearing. The petition of such applicant shall contain as many of the matters set forth in section one hundred and fifty-five of this act as he can ascertain, and the decree of sale shall fix the period of time within which the executor or administrator shall make the sale.

If, upon the hearing of such petition, it shall appear to the satisfaction of the Probate Judge that it is to the interest of the estate that such mining property or interests of the estate should be sold, or if it be made to appear to his satisfaction that an immediate sale is necessary in order to secure the just rights or interests of the mining partners, tenants in common, or mining corporations in which such mining shares, stocks or property are held, such Probate Judge shall thereupon make an order of sale authorizing the executor or administrator to sell such mining interests, mines, stocks or shares, as herein-after provided.

SEC. 165. Upon making such order mentioned in the last section, a certified copy of the order of sale shall be delivered by the Court or the Clerk, to the executor or administrator, who shall be thereupon authorized and required to sell the real estate as directed.

SEC. 166. When a sale is ordered, and is to be made at public auction, notice of the time and place of holding the same shall be posted up in three of the most public places in the

county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the Court may direct, for three weeks successively next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty. Such sale at public auction shall be made in the county where the land is situated, but when the tract of land is situated in two or more counties, it may be sold in either of said counties. The sale shall be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and shall be made on the day named in the notice of sale, of the mines, mining interests, or of the mining company or corporation in which such interests or shares are held, and specially the reason for such sale.

Upon the presentation of such petition, the Probate Judge shall make an order directing all persons interested to appear before him at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mines, mining interests, shares or stocks, as are set forth in such petition, and as belong to such estate. A copy of such order to show cause shall be personally served on all persons interested in the estate at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the Court shall order; *provided*, however, if all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with, unless the sale shall be adjourned as provided by law. When a sale of real estate is ordered and is to be made at private sale, notice of the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for two weeks successively next before the day on or after which the sale will be made, in which notice the lands and tenements to be sold shall be described with common certainty. The notice shall state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to shall be at least fifteen days from the first publication of the notice, and the sale shall not be made before said day, and shall be made within six months thereafter.

Such bids or offers shall be made in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, and may be filed in the office of the Clerk of the Probate Court, to which the return

of sale must be made, at any time after the first publication of the notice and before the making of the sale; *provided*, that if it shall be shown that it will be for the best interest of the estate, the Court or Judge may by an order shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen days, but not less than eight days from the first publication of the notice, in which case the notice of the sale and the sale may be made to correspond with such order. No such sale of real estate at private sale shall be confirmed by the Court, unless the sum offered shall be at least ninety per cent of the appraised value thereof, nor unless such real estate shall have been appraised within one year of the time of such sale. If the said real estate has not been so appraised, or if the Court shall be satisfied that the appraisal is too high or too low, appraisers shall be appointed, and they shall make an appraisal thereof in the same manner as in case of the appraisal of the inventory; and this may be done at any time before the sale or before the confirmation thereof.

SEC. 167. Such sale shall be made in the county where the land is situated, but when the tract of land is situated in two or more counties it may be sold in either of said counties; the sale shall be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and shall be at public auction, unless the Court shall order that the real estate, or some part thereof, may be sold at either public or private sale, but the same shall not be sold at private sale until at least one week after notice of the terms of sale, and of the time, not less than one week, within which offers or bids will be received, shall have been given according to law, as in case of sales at public auction; nor shall such sale at private sale be made unless the real estate to be sold shall have been appraised within a year previous to the time of such sale; nor shall the same be sold at private sale for any sum less than ten per cent, less than the appraised value thereof; if said real estate has not been so appraised, or if the Court shall be satisfied that the appraisal is too high or too low, appraisers shall be appointed, and they shall make an appraisal thereof in the same manner as in the case of the appraisal of the inventory.

SEC. 168. The executor or administrator shall, when the sale is made upon a credit, take the note or notes of the purchaser for the purchase-money, with security to be approved by the Probate Judge.

SEC. 169. The executor or administrator making any sale of any real estate shall make a return of his proceedings to the Probate Court, and the same shall be filed in the office of the Clerk, and such return may be so made and filed at any time subsequent to the sale, either in term or vacation; if the sale be made at public auction, and the return be made to the Court and filed in the office of the Clerk on or before the first day of the next term thereafter, no notice shall be required upon such return, or of the hearing thereon, but such hearing may be had upon said first day of the term or any subsequent day to which the same may be continued.

If the sale be not made at public auction, or if made at public auction, a hearing upon the return of proceedings be asked for in the return upon a day before the first day of the next term thereafter, or upon any other day than the first day of the next term after such sale, the Court or Judge shall fix a day for the hearing, of which notice of at least ten days shall be given.

The notice shall be given by the Clerk, by notices posted in three public places in the county, or by publication in a newspaper, or both, as the Court or Judge *shall* direct, and shall briefly indicate the land sold, and the sum for which it was sold, and shall refer to the return for further particulars.

Upon the said first day of the term, or upon the day fixed for the hearing upon any such return, or upon the day to which the hearing may be continued, the Court shall examine the return, and may examine witnesses in relation to the same, and if the Court shall be of the opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent, exclusive of the expenses of a new sale, be obtained, he shall vacate said sale and direct another to be had, of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place; *provided*, that if an offer greater by ten per cent, or more than that named in the return, be made to the Court, in writing, by a responsible person, it shall be in the discretion of the Court to accept such offer and confirm the sale to such person or to order a new sale.

SEC. 170. When the return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation of the sale, and they may be heard on said first day of the term subsequent to the sale, or any subsequent day to which the matter may be continued, or upon any day that may be fixed by the order of the Court or Judge, and may produce witnesses in support of his objections.

SEC. 171. If it appear to the Court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum, as above specified, cannot be obtained, or if the advance bid mentioned in section one hundred and sixty-nine of this act be made and accepted by the Court, the Court shall make an order confirming the sale, and directing conveyances to be executed, and such sale, from that time, shall be confirmed and valid, and a certified copy of the order authorizing the sale, and of the order confirming the same, and directing conveyances to be executed, shall be recorded in the office of the Recorder of the county within which the land sold is situated; *provided*, that if, after such confirmation, the purchaser shall neglect or refuse to comply with the terms of sale, the Court may, on motion of the executor or administrator, and after notice to the purchaser, order a new sale of the property sold to such purchaser.

If the amount realized on such resale do not cover the bid and the expenses of the previous sale, such purchaser shall be liable for the deficiency.

SEC. 172. Such conveyance shall thereupon be executed to the purchaser by the executor or administrator.

They shall refer to the orders of the Probate Court authorizing and confirming the sale of the property of the testator or intestate, and directing conveyances thereof to be executed, and to the record of such orders in the office of the County Recorder, either by the date of such recording, or by the date and volume and page of such record, and such reference shall have the same effect as if the said orders were at large inserted in the conveyance.

The conveyance so made shall be deemed to convey all the right, title, interest and estate of the testator or intestate in the premises at the time of his death. When, however, by operation of law, or otherwise, the estate shall have acquired any right, title, or interest in the premises, other than, or in addition to that of the testator or intestate at the time of his death, such right, title or interest shall also be passed by such conveyance.

SEC. 173. Before any order is entered confirming the sale, it shall be proved to the satisfaction of the Court that notice was given of the sale, as herein prescribed, and the order of confirmation shall state that such proof was made.

SEC. 174. If, at the time appointed for the same, the executor or administrator shall deem it for the interest of

all persons concerned therein that the sale shall be postponed, he may adjourn the same from time to time, not exceeding in all three months.

SEC. 175. In case of the adjournment, notice thereof shall be given by a public declaration, at the time and place first appointed for the sale, and if adjournment be more than one day, further notice shall be given by posting in three or more public places in the county where the land is situated, or publishing the same, or both, as the time and circumstances will admit.

SEC. 176. When a testator shall have given any legacy by will that is effectual to pass, or charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay a legacy, together with his debts and the charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner and upon the same terms and conditions as are prescribed in this act, in case of a sale for the payment of debts.

SEC. 177. If the testator shall make provisions by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

SEC. 178. When such provision has been made, or any property directed by the will to be sold, whether for payment of debts or expenses or for any other purpose, the executor or administrator with the will annexed may proceed to sell without the order of the Probate Court, but he shall be bound, as an administrator, to give notice of the sale and to return accounts thereof to the Court, and to proceed in making the sale in all respects as if it were made under the order of the Court, unless there are special directions given in the will, in which case he shall be governed by such directions.

But in all cases no sale shall be valid unless confirmed by the Court, under the rules prescribed in cases of sales of real estate by an administrator; and before granting such confirmation the Court may require security, as in cases of sales of land by an administrator.

SEC. 179. If the provisions made by the will, or the estate appropriated, be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose according to the provisions of this chapter.

SEC. 180. The estate, real and personal, given by will to any legatees or devisees, shall be held liable to the payment of debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, except that specific devises or legacies may be exempted, if it shall appear to the Court necessary to carry into effect the intentions of the testator, if there shall be other sufficient estate.

SEC. 181. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses; and the Probate Court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

SEC. 182. If a deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands and under such contract may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this act, in respect to lands of which he died seized, except as hereinafter provided.

SEC. 183. Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the Probate Judge until the purchasers shall execute a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the Probate Judge shall approve.

SEC. 184. Such bond shall be conditioned that the purchaser will make all payments for such land that shall become due after the date of such sale, and will fully indemnify the executor or administrator and the person so entitled against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

SEC. 185. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment

of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the person entitled to the interest of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he was living.

SEC. 186. When any sale is made by an executor or administrator, pursuant to the provisions of this act, of land subject to any mortgage or other lien, which is a valid claim against the estate of the deceased, the purchase-money shall be applied, after paying the necessary expenses of the sale, first, to the payment and satisfaction of the mortgage or lien, and the residue in course of administration; such application of the purchase-money to the satisfaction of the mortgage or lien shall be made without delay, and the land shall remain subject to such mortgage or lien until the purchase-money shall have been actually so applied.

Provided, however, that when it shall be shown to be necessary, the Court may direct that sufficient of such purchase-money be retained to meet such portion of the family allowance and charges and expenses of administrations as may properly be required from the holder of such claims.

Such reservation of a portion of the purchase-money shall not prevent the discharge of the mortgage or lien, and no lien against any estate shall be affected by the statute of limitations pending the proceedings for the settlement of such estate.

SEC. 187. In all cases in which land is sold by an executor or administrator, the necessary expenses of the sale shall be first paid out of the proceeds.

SEC. 188. If there shall be any neglect or misconduct in the proceedings of the executor in relation to any sale by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

SEC. 189. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this act, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person having an estate of inheritance therein.

SEC. 190. No action for the recovery of any estate, sold by an executor or administrator under the provisions of this act,

shall be maintained by an heir or other person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

SEC. 191. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action shall first accrue, but all such persons may commence such action at any time within three years after the removal of the disability.

SEC. 192. Whenever a sale has been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the Probate Court, at its next term thereafter, an account of sales verified by his affidavit.

If he neglects to make such return he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him, to appear and show cause why such attachment should not issue, or such revocation should not be made.

SEC. 193. No executor or administrator shall directly or indirectly purchase any property of the estate by him represented.

Of the powers and duties of the executor and administrator, and of the management of the estate.

SEC. 194. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and shall collect all debts due to the deceased. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors or administrators shall be deemed the possession of the heirs or devisees.

Such possession by the heirs or devisees shall be subject, however, to the possession of the executor or administrator for all other purposes.

SEC. 195. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 196. Executors and administrators may maintain action against any person who shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his life-time.

They may also maintain actions for trespass committed on the real estate of the deceased in his life-time.

SEC. 197. Any person, or his personal representative, shall have action against the executor or administrator of any testator or intestate who in his life-time shall have wasted, destroyed, taken or carried away, or converted to his own use the goods or chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 198. When there was any partnership existing between the testator or intestate, at the time of his death, and any other person, the surviving partner shall have the right to continue in possession of the effects of the partnership and to settle its business, but the interest of the deceased shall be included in the inventory, and appraised as other property.

The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of his testator or intestate.

Upon the application of the executor or administrator, the Probate Judge shall, whenever it may appear necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment.

And the executor or administrator may maintain against him any action which his testator or intestate could have maintained.

SEC. 199. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator on the same estate.

SEC. 200. In actions brought by or against executors or administrators, it shall not be necessary to join those as parties to whom letters shall have been issued, and who have not qualified.

SEC. 201. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the Probate Court or Judge, may compound with him, and give him a discharge upon receiving a fair and just dividend of his effects.

A compromise may also be authorized, when it shall appear to be just and for the best interest of the estate.

SEC. 202. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his life-time, have conveyed any real estate or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt or duty of any person, or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights or credits which may have been so fraudulently conveyed by the deceased in his life-time, whatever may have been the manner of such fraudulent conveyance.

SEC. 203. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased; nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the Probate Judge shall direct.

SEC. 204. All the real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the Probate Court, and the proceeds of all goods, chattels, rights and credits so recovered, shall be appropriated in payment of the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

Of the conveyance of real estate by executor and administrators in certain cases.

SEC. 205. When any person who is bound by contract, in writing, to convey any real estate, shall die before making the conveyance, the Probate Court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to make such conveyance.

SEC. 206. On the presentation of a petition by any person claiming to be entitled to such conveyance, from any executor or administrator, setting forth the facts upon which such claim is predicated, the Probate Judge shall appoint a time and place for hearing such petition, which shall be at a regular term of

the Court, and shall order notice of the pendency thereof, and of the time and place of hearing.

SEC. 207. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof, by affidavit or otherwise, of the due publication of the notice, the Court shall proceed to a hearing, and all persons interested in the estate may appear and contest such petition by filing their objections in writing, and the Court may examine on oath the petitioner, and such other witnesses as may be deemed necessary.

SEC. 208. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the Court is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, the Court shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

SEC. 209. It shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded with the deed in the office of the recorder in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

SEC. 210. If upon hearing in the Probate Court as hereinbefore provided, the Court shall doubt the right of the petitioner to have a specific performance of the contract, the Court shall dismiss the petition without prejudice to rights of the petitioner, who may, at any time within six months thereafter, proceed in the District Court to enforce a specific performance.

SEC. 211. Every conveyance made in pursuance of a decree of the Probate Court, as provided in this act, shall be effectual to pass the estate contracted for as fully as if the contracting party himself was still living and then executed the conveyance.

SEC. 212. A copy of the decree for a conveyance made by the Probate Court, and duly certified and recorded in the office of the Recorder of the county where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in

like manner as if they had been conveyed in pursuance of the decree.

SEC. 213. The recording of any decree, as provided above, shall not prevent the Court making such decree from enforcing the same by other process.

SEC. 214. If the person to whom the conveyance was to be made shall die before the commencement of the proceedings, according to the provisions of this act, or before the completion of the conveyance, any person who would have been entitled to the estate, under him, as heir, devisee or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the persons so entitled, may commence such proceedings, or may prosecute the same, if already commenced, and the conveyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

Of accounts to be rendered by executors and administrators, and of the payment of debts.

SEC. 215. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator, or intestate, out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

SEC. 216. Every executor and administrator shall be chargeable, in his account, with the whole of the estate of the deceased, which may come to his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of the estate.

SEC. 217. He shall not make profit by the increase nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall sell any part of the estate for more than the appraisement, and, if any shall be sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

SEC. 218. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

SEC. 219. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides; but when the deceased shall, by his will, make some other provision for the compensation of his executors, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the Probate Court, renounce all claim for compensation provided by the will.

SEC. 220. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge, in his account, so much as he shall have actually paid.

SEC. 221. When no compensation shall have been provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of the whole estate accounted by him, as follows: For the first thousand dollars, at the rate of seven per cent; for all above that sum, and not exceeding ten thousand dollars, at the rate of five per cent; for all above that sum, at the rate of four per cent; and the same commissions shall be allowed to administrators. In all cases such further allowance may be made as the Probate Judge may deem just and reasonable for any extraordinary services.

SEC. 222. At the third term of the court, after his appointment, and thereafter at any time when required by the Court, either upon its own motion, or upon the application of any person interested in the estate, the executor or administrator shall render, for the information of the Court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

SEC. 223. If the executor or administrator fail to render an exhibit, as in the preceding section required, it shall be the duty of the Judge to cause a citation to be issued requiring him to appear and render it.

SEC. 224. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the Probate Judge, praying that the executor or administrator be required to appear and render such exhibit, setting

forth the facts, showing that it is necessary and proper that such an exhibit should be made.

SEC. 225. If the Judge be satisfied, either from the oath of the applicant, or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall direct a citation to be issued to the executor or administrator, requiring him to appear at some day, to be named in the citation, and render an exhibit as prayed for.

SEC. 226. When an exhibit is rendered by an executor or administrator, any person interested may appear, and by objections in writing, contest any account or statement therein contained. The Court may examine the executor or administrator, and if he has been guilty of negligence, or has wasted or embezzled, or mismanaged the estate, his letters shall be revoked.

SEC. 227. If any executor or administrator neglect or refuse to appear and render an exhibit, after having been duly cited, an attachment may be duly issued against him, or his letters may be revoked, in the discretion of the Court.

SEC. 228. Every executor or administrator shall render a full account and a report of his administration, upon the expiration of one year from the time of his appointment; if he fail to present his account, it shall be the duty of the Court or Judge to compel the rendering of such account, by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation has been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered shall exhibit not only the debts which may have been paid, but also a statement of all the debts which have been duly presented and allowed during the period embraced in the account.

SEC. 229. If the executor or administrator resides out of the county, or absconds or conceals himself, so that the citation cannot be personally served, shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within five days after being committed where the attachment has been executed, his letters shall be revoked.

SEC. 230. Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the Probate Court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

SEC. 231. In rendering his account, the executor or administrator shall produce vouchers for his charges, debts, claims and expenses which he shall have paid, which vouchers shall be filed and remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof, and the Court may also examine in the same manner such other witnesses as the Court may deem necessary; when any such voucher shall be required for other purposes, it may be withdrawn on leaving a certified copy on file; if any voucher be lost, or for other good reason the same cannot be produced on settlement, the payment may be proved by the oath of any competent witness.

SEC. 232. On the settlement of his account he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath positive to the fact of payment, specifying where and to whom the payment was made, and if such oath be uncontradicted; but such allowances in the whole shall not exceed five hundred dollars for payment in behalf of any one estate.

SEC. 233. When any account is rendered for settlement, the Court or Judge shall appoint a day for settlement thereof; the Clerk shall thereupon give notice thereof, by causing notices to be posted in at least three public places in the county; the notices shall set forth the name of the estate, and of the executor or administrator, and the day appointed for the settlement of the account; the Court or Probate Judge may order such further notice to be given as he may deem proper.

SEC. 234. On the day appointed, or any subsequent day to which the hearing may be adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

SEC. 235. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint

some disinterested person to represent him, who, on behalf of the minor, may contest the account, as any other person having an interest might contest it, and who shall be allowed by the court for his services a reasonable compensation. The court shall also, if it deems it necessary, appoint an attorney to represent the absent heirs and devisees. All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown.

SEC. 236. The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation, and may allow a reasonable compensation to such referees, to be paid out of the estate of the deceased.

SEC. 237. The settlement of the account and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond within two years after their respective disabilities shall cease, and, in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

SEC. 238. The account shall not be allowed by the court until it be first proved that notice has been given as required by this act, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

SEC. 239. The debts of the estate shall be paid in the following order: 1st. Funeral expenses; 2d. The expenses of the last sickness; 3d. Debts having preference by the laws of the United States; 4th. Debts having preference by the laws of the Territory; 5th. Judgments rendered against the deceased in his life-time, and mortgages in the order of their date; 6th. All other demands against the estate.

SEC. 240. The preference given in the preceding section to a mortgage shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

SEC. 241. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

SEC. 242. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands, to pay the funeral expenses and the expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration, but he shall not pay any other debt, or any legacy until, as prescribed in this act, the payment has been ordered by the Court.

SEC. 243. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this act, the Court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executor or administrator, the Court shall specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account shall be considered as a final account, and the executor or administrator shall be entitled to his discharge, on producing and filing the necessary vouchers and proofs, showing that such payments have been made, and that he has fully complied with the decree of the Court.

SEC. 244. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, or established, or absolute, shall be paid into the Court, where it shall remain, to be paid over to the party when he shall become entitled thereto, or, if he fail to establish his claim, to be paid over or distributed as the circumstances of the estate require; *provided*, that if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

SEC. 245. Whenever a decree shall be made, by the Probate Court, for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree as upon a judgment in the District Court, in favor of

each creditor, and the same proceedings may be had under such execution as if it had been issued from the District Court. The executor or administrator shall also be liable on his bond to each creditor.

SEC. 246. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment shall have any right to call upon the creditors who have been paid, or upon the heirs, devisees or legatees, to contribute to the payment of his claim; but if the executor or administrator shall have failed to give the notice to the creditors, as prescribed by this act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed; *provided*, that this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such day.

SEC. 247. If the whole of the debts shall have been paid by the first distribution the Court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees or other persons entitled as provided in this act; but if there be debts remaining unpaid, *or if, for other reason, the estate be not in a proper condition to be closed*, the Court shall give such extension of time as may be reasonable for a final settlement of the estate.

SEC. 248. At the time designated *in the last section* or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all the debts due by the estate, *and the estate be in a proper condition to be closed*, the executor or administrator shall render a final account and pray a settlement of his administration.

SEC. 249. If he neglect to render his account, the same proceedings may be had as prescribed in this act, in regard to the first account to be rendered by him, and all the provisions of this act relative to the last-mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

SEC. 250. At any time after the first term of Court after the issuing of letters testamentary or of administration, any

heir, devisee or legatee may present his petition to the Court, that the legacy or share of the estate to which he is entitled may be given to him upon his giving bonds for the payment of his proportion of the debts of the estate.

SEC. 251. Notice of the application shall be given to the executor or administrator *personally*, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

SEC. 252. The executor or administrator, or any person interested in the estate, may appear and resist the application, or any other heir, devisee or legatee may make a similar application for himself.

SEC. 253. If, at the hearing, it appear that the estate is but little indebted, and that the share of the party or parties applying may be allowed to him or them, without injury to the creditors of the estate, the Court shall make a decree in conformity with the prayer of the applicant or applicants; *provided*, each one of them shall first execute and deliver to the executor or administrator a bond in such sum as shall be designated by the Probate Judge, and with the sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the heir, legatee or devisee, whenever required, of his proportion of the debts due from the estate.

SEC. 254. Such decree may order the executor or administrator, to deliver to the heirs, legatee or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof.

SEC. 255. If in the execution of such decree any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

SEC. 256. The costs of the proceedings authorized by the preceding section shall be paid by the applicant, or, if there be more than one, shall be apportioned equally among them.

SEC. 257. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the Court for

an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the Court, if satisfied of the necessity of such payment, shall make an order accordingly, designating the amount, and giving a time within which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

SEC. 258. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee or devisee, *or the grantee of the heir, legatee or devisee*, the Court shall proceed to distribute the residue of the estate, if any, among the persons who, by law, are entitled.

A statement of the receipts and disbursements of the executor or administrator, since the rendition of his final accounts, shall be reported and filed at the time of making such distribution, unless distribution of the real estate only be made, and a settlement thereof, together with an estimate of the expenses of closing the estate, shall be made by the Court, and shall be included in the decree, or the Court or Judge may order notice of the settlement of such supplementary account, and may refer the same as in other cases of the settlement of accounts.

SEC. 259. In the decree the Court shall name the persons and the proportions or parts to which each shall be entitled, and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession. Such decree shall be conclusive as to the rights of heirs, legatees or devisees, subject only to be reversed, set aside, or modified on appeal, in the manner and within the time provided by law.

SEC. 260. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given in the manner required in regard to an application for the sale of land by an executor or administrator. The Court may order such further notice to be given as it may deem proper.

SEC. 261. When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, or when property of the estate shall be held in common and undivided with other parties, partition may be made by three disinterested

persons to be appointed commissioners for that purpose by the Probate Court or Judge, who shall be duly sworn to the faithful discharge of their duties by any officer authorized to administer oaths.

A certified copy of the order of their appointment, and of the decree assigning and distributing the estate, shall be issued to them as their warrant, and their oath shall be indorsed thereon.

Upon consent of the parties, or when the Court shall deem it proper and just, it shall be sufficient to appoint one commissioner only, who shall have the same authority, and be governed by the same rules as if three were appointed.

SEC. 262. If the real estate shall be in different counties, the Probate Court may, if it shall judge proper, appoint different commissioners for each county, and in such cases the estate in each county shall be divided separately as if there was no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the Probate Court, make division of such real estate, wherever situated in this Territory.

SEC. 263. Such petition may be ordered on the petition of any of the persons interested, but before commissioners shall be appointed or any partition shall be ordered as directed in this act, notice shall be given to all persons interested who shall reside in this Territory, or their guardians, and to agents, attorneys or guardians, if there be any in this Territory, of such as reside out of the Territory, either personally or by public notice, as the Probate Court shall direct.

The petition for partition may be filed at any time before the decree of distribution, and attorneys, guardians and agents may be appointed and notice be given, but the commissioners shall not be appointed until the decree has been made assigning the estate.

But when the application is made, solely to have partition between the estate administered upon and any other parties, such application may be made and such partition ordered at any time the Court may direct.

SEC. 264. Partition of the real estate may be made as provided in this act, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

SEC. 265. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished, unless two or more of the parties interested shall consent to have their shares set out so as to be held by them in common and undivided.

SEC. 266. When any such real estate cannot be divided, without prejudice or inconvenience to the owners, the Probate Court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and among children, preferring the elder to the younger; *provided*, the parties so accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction, or in case of the minority of such party, then to the satisfaction of his or her guardian, and the true value of the estate shall be ascertained and reported by Commissioners, and when the Commissioners appointed to make partition shall be of the opinion that any such real estate cannot be divided without prejudice or inconvenience to the owners, they shall so report to the Court, and shall recommend that the whole be assigned as before provided, and shall find and report the true value of such real estate.

Upon the return of the report of the Commissioners, and upon making or securing payment as before provided, the Court may, if the same shall appear just and proper, confirm the report, and thereupon the assignment shall be complete, and the whole of such real estate shall vest in the person or persons to whom the same shall be so assigned.

SEC. 267. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the Commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding section; *provided*, the party so accepting shall pay or secure to one or more of the others such sums as the Commissioners shall award, to make the partition equal, and the Commissioners shall make their award accordingly; but such partition shall not be established by the Court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 268. When it cannot otherwise be fairly divided, the whole, or any part of the estate, real or personal, may be recommended by the Commissioners to be sold; and if the

report be confirmed, the Court may order a sale by the executor or administrator, or by a Commissioner appointed for that purpose, and distribute the proceeds. The sale shall be conducted and reported upon, and be confirmed, in the same manner and under the same rules as in ordinary cases of sales of land by an administrator under this act.

SEC. 269. When partition of real estate among heirs or devisees shall be required, and such real estate shall be in common and undivided with the real estate of any other person, the Commissioners shall first divide and sever the estate of the deceased from the estate in which it lies in common, and such division so made and established by the Probate Court shall be binding upon all persons interested. Upon the application, by petition, of the heirs or creditors, or any of them, the Probate Court may authorize the executor or administrator to bring suit for such partition in the District Court. Such suit may also be brought by an executor when so authorized by the terms of the will.

SEC. 270. Before any partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the Territory, or an attorney for all absent heirs and persons interested; and notice shall be given to all parties interested in the partition, their guardians, agents or attorneys, by the Commissioners of the time when they shall proceed to make partition; the Commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

SEC. 271. The Commissioners shall make report of their proceedings and of the partition agreed upon by them to the Probate Court, in writing, and the Court may, for sufficient reasons, set aside such report, and commit the same to the same Commissioners, or appoint others; and when such report shall be finally confirmed, a certified copy of the decree of partition made thereon, attested by the Clerk, under the seal of the Court, shall be recorded in the office of the Recorder of the county where the lands lie.

SEC. 272. When the Probate Court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint Commissioners to make partition or distribution of such estate,

unless the parties to whom the assignment shall be decreed, or some of them, shall request that such partition shall be made.

SEC. 273. All questions as to advancements made, or alleged to have been made, by the deceased to any heirs, may be heard and determined by the Probate Court, and shall be specified in the decree assigning and distributing the estate, and in the warrant to the Commissioners, and the final decree of the Probate Court, or in case of appeal, of the Supreme Court, shall be binding on all parties in the estate.

SEC. 274. When any estate shall be assigned by decree of the Court, or distributed by Commissioners, as provided in this act, to any person residing out of this Territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the Court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

SEC. 275. Such agent shall give a bond to the Territory of Arizona, to be approved by the Probate Judge, faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the Court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 276. When the estate shall remain in the hands of the agent unclaimed for a year, it shall be sold under the order of the Court, and the proceeds deducting the expenses of the sale, to be allowed by the Court, shall be paid into the Territorial Treasury. When the payment is made, the agent shall take from the Treasurer duplicate receipts, one of which he shall file in the office of the Territorial Auditor, and the other in the Probate Court.

SEC. 277. The agent shall be liable, on his bond, for the care and preservation of the estate when in his hands, and for the payment of the proceeds of the sale, as required in the preceding section, and may be sued thereon by any person interested.

SEC. 278. When any person shall appear and claim the money paid into the Treasury, the Probate Court making the distribution, being first satisfied of his right, shall grant him a certificate, under its seal, and upon the presentation of the certificate

to the Territorial Auditor, he shall draw his warrant on the Treasurer for the amount.

SEC. 279. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under the order of the Court, all the property of the estate to the parties entitled, and performed all acts lawfully required of him, the Court shall make a decree discharging him from all liability to be incurred thereafter.

SEC. 280. The final settlement of an estate shall not prevent a subsequent issuance of letters testamentary, or of administration, should other property of the estate be discovered, or should it become necessary or proper from any cause that letters should again be issued.

Removal of executors and administrators in certain cases.

SEC. 281. Whenever the Probate Judge has reason to believe from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate or has become incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, it shall be his duty, by an order entered upon the minutes of the Court, to suspend the powers of such executor or administrator until the matter can be investigated.

SEC. 282. During the suspension of the powers of the executor or administrator, under the authority of the preceding section, the Probate Judge may, if the condition of the estate requires it, appoint a special administrator to take charge of the effects of the estate, who shall give the bond and account as other special administrators are required to do.

SEC. 283. When such suspension has been made, notice thereof shall be given to the executor or administrator, and he shall be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or if, appearing, the Court be satisfied that there exists cause for his removal, his letters shall be revoked, and letters of administration granted anew, as the case may require.

SEC. 284. At the hearing any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed. Such allegations shall be heard and determined by the Court.

SEC. 285. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the Territory, notice may be given him of the pendency of the proceedings by publication, in such manner as the Court may direct; and the Court may proceed upon such notice as if the citation had been personally served.

SEC. 286. In the proceedings authorized by the preceding sections of this act, for the removal of an executor or administrator, the Court may compel his attendance by attachment, and may compel him to answer questions on oath touching his administration, and upon his refusal so to do may commit him until he obey, or may revoke his letters, or both, and the Probate Court shall also examine such other witnesses as shall be deemed necessary.

Miscellaneous Provisions.

SEC. 287. All orders and decrees made by the Probate Court during its terms shall be entered at length in the minute-book of the Court, and also all orders which the Probate Judge is empowered to make out of term-time. The Probate Judge shall sign the minutes of the proceedings of each day during each term of Court, and he shall sign each order made by him out of term-time, at the time of making the same.

SEC. 288. Whenever personal notice is required by this act to be given to any party to a proceeding in the Probate Court, and no other mode of giving notice is prescribed, it shall be given by citation issued from the Court, signed by the Clerk, and under the seal of the Court directed to the sheriff of the proper county, and requiring him to cite such persons to appear before the Court or Judge, as the case may be, at a time and place to be named in the citation. In the body of the citation shall be briefly stated the nature or character of the proceeding.

SEC. 289. The officer to whom the citation is directed shall serve it by delivering a copy to the person *therein named*, or to each of them, if there be more than one, and shall return the original to the court, according to its directions, indorsing thereon the time and manner of service.

All proofs of publication, or other mode or modes of giving notice or serving papers, may be made by the affidavit of any

person competent to be a witness, which affidavit shall be filed, and shall constitute *prima facie* evidence of such publication or notice of (or ?) service.

SEC. 290. When no other time is specially prescribed, citation shall be *served* at least five days before the return day thereof.

SEC. 291. Unless otherwise specially prescribed, the Clerk of the Probate Court shall have power to administer all oaths necessary and proper to be taken, touching any matter pending in the Probate Court, or in any manner connected with any proceedings of which the Court has jurisdiction, and he shall have power to issue citations and subpoenas upon the application of any party.

SEC. 292. All writs and processes issuing from the Probate Court shall be signed by the Clerk and authenticated with the seal of the Court, except subpoenas which need not be under seal.

SEC. 293. The practice in the District Court shall be applicable to proceedings in the Probate Court, so far as the same does not conflict with any enactment specially applicable to the Probate Court, or is not inconsistent with the provisions of this act, or the act to provide for the appointment and prescribe the duties of guardians. For the purpose of taking the testimony of a witness or witnesses in other counties of this Territory, or in other States or Territories and countries, a commission may be issued whenever in the discretion of the Court.

SEC. 294. Appeals shall be allowed from the decisions of the Probate Court to the District Court of the same county in the following cases:

First. For or against granting or revoking letters testamentary, or of administration, or of guardianship.

Second. For or against admitting a will to probate.

Third. For or against the validity of a will, or revoking the probate thereof.

Fourth. For or against setting apart property, or making an allowance for a widow or child, or both.

Fifth. For or against directing the sale or conveyance of real property.

Sixth. On the settlement of any account of an executor, or administrator, or guardian.

Seventh. For or against declaring, allowing or directing the payment of a debt, claim, legacy or distributive share.

SEC. 295. The appeal may be taken within twenty days after the order, decree or judgment is made and entered in the minutes of the Court; it shall be made by filing with the Clerk of the Probate Court a notice stating the appeal from the order, decree or judgment, or some specific part thereof, and serving a copy of said notice upon the opposite party, and by executing an undertaking, or giving surety on such appeal, in the same manner, and to the same extent, as upon an appeal to the Supreme Court from the District Court; *provided*, the appeal of an executor or administrator who has given an official bond shall be complete and effectual without the undertaking.

SEC. 296. Whenever it is or may be provided by law that any order or decree, or copy of any order or decree of a Probate Court or Probate Judge, shall or may be recorded in the office of the County Recorder, any such order, or decree, or copy shall, from the time of filing the same in the said office for record, impart notice to all persons of the contents thereof; *provided*, that nothing in this section shall be construed to lessen in any respect the force or effect, as notice or otherwise, of any order, decree, act, or proceeding of a Probate Court or Probate Judge.

SEC. 297. The appeal shall not be a supersedeas in any other matter relating to the administration of the estate, except that upon which the appeal is specially taken; when the appeal is taken and perfected, the clerk shall deposit in the office of the District Court all the original papers in his office relating to the subject-matter of the appeal.

SEC. 298. Sections 340, 341, 342, 343, 344, 345 and 346, of chapter forty-eight, Howell Code, of Proceedings in Civil Cases, shall be applicable to proceedings in Probate Courts on appeal from said Courts to the District Courts.

SEC. 299. Appeals to the District Court from the Probate Court shall be taken on questions of law alone. Upon an appeal from a judgment or order, the Appellate Court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside or confirm, or modify, any or all of the proceedings subsequent to, or dependent upon, such judgment or order; a certified copy of the judgment or decision of the District Court shall be transmitted to the Probate Court, and shall be entered therein as the judgment of the said Probate Court, unless an appeal be taken therefrom to the Supreme Court as provided by law.

SEC. 300. When an order or decree appointing an executor or administrator or guardian, shall be reversed on appeal, all lawful acts in administration upon the estate performed by such executor or administrator, or guardian, if he shall qualify, shall be as valid as if such order or decree had been affirmed. When any executor or administrator resigns, or is removed, a successor may be appointed, if a necessity therefor exists, without again proving the death, and residence of the testator or intestate. Where it is not otherwise prescribed by law, the Probate Court, or the District Court on appeal, may, in its discretion, order costs to be paid by any party, to the proceedings, or out of the estate, as justice may require; execution for the costs may issue out of the Probate Court.

SEC. 301. In all issues of fact arising in the Probate Court, the trial thereof shall be by the Court or Probate Judge, unless either of the parties at issue demand a trial by jury. A trial by jury shall be demanded at the time of joining issue; and shall be deemed waived if neither party then demand it. When demanded the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the Probate Judge, and shall be on the same day or within the next two days. The jury shall be summoned, upon an order of the Probate Judge, in the county, and not from the bystanders. At the time appointed for the trial, the Probate Judge shall proceed to call from the Jurors for the trial of the issue. The jury, by consent of the parties, may consist of any number not more than twelve, nor less than three. If a sufficient number of competent and indifferent Jurors do not attend, the Probate Judge shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury. Either party may challenge the Jurors. The challenge shall be either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth in section 164 of chapter 48, Howell Code, of Proceedings in Civil Cases. Challenges for cause shall be tried by the Probate Judge in a summary manner, who may examine the Juror challenged and witnesses.

SEC. 302. Whenever proof of notice shall be required by the provisions of this act, the certificate of the Probate Judge that such notice has been duly given shall be deemed sufficient proof.

SEC. 303. The Probate Judge of each county shall be furnished with an office for the transaction of probate business,

and, with the necessary furniture and stationery therefor by the Board of Supervisors of such county, and the cost thereof shall be audited and paid as other charges against the county.

SEC. 304. The terms of the Probate Court shall be holden at the county seat, on the first Monday of January, April, July and October in each year, and the Judge may hold such adjourned or special terms as he shall think proper.

SEC. 305. Chapter 29, Howell Code, entitled "Of Probate Courts," and the amendments thereto, are hereby repealed.

SEC. 306. This act shall take effect and be in force from and after its passage.

APPROVED February 14th, 1873.

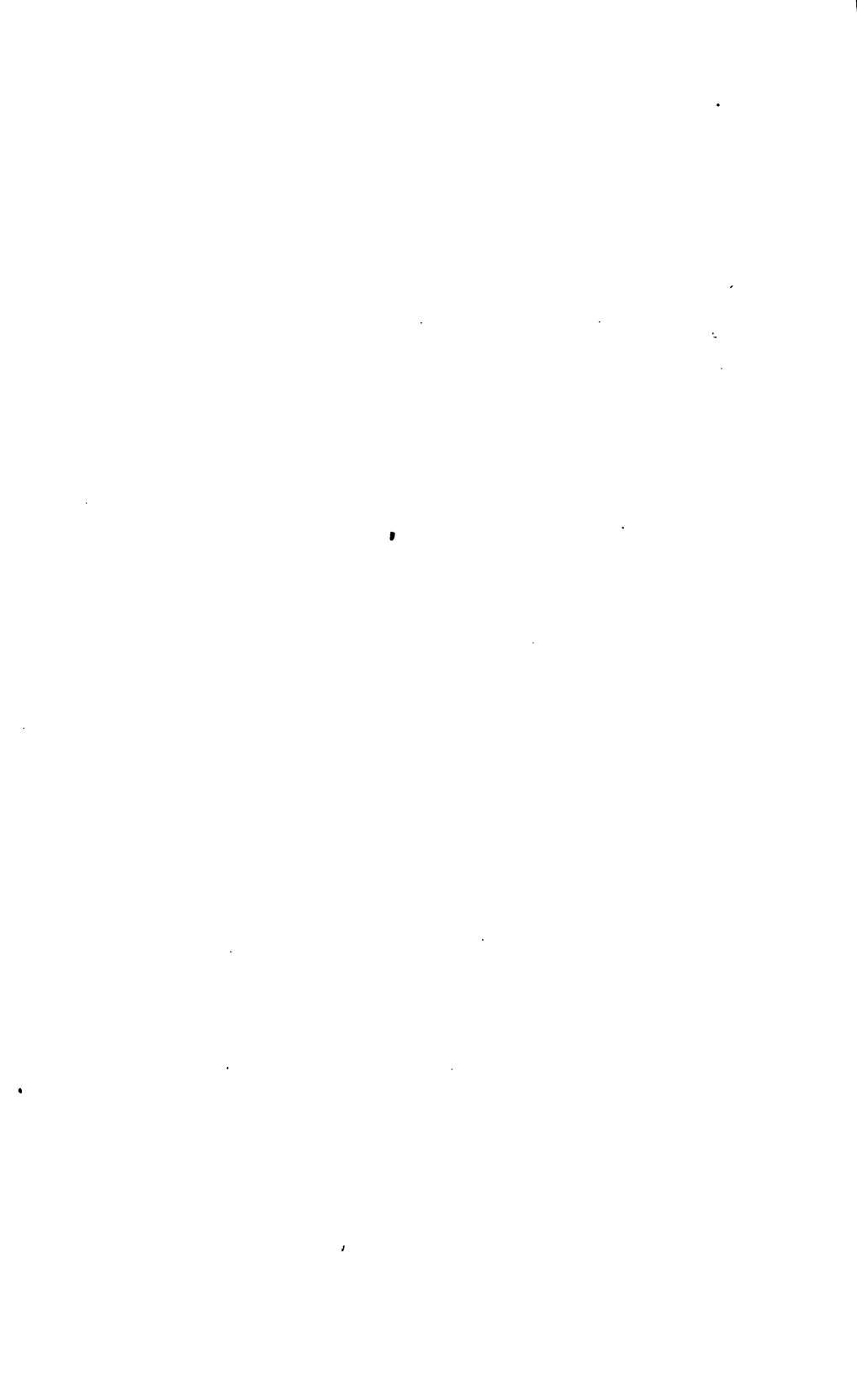


RESOLUTIONS.

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Resolved, That the Secretary of the Territory of Arizona be instructed to forward a copy of these resolutions to General Crook, Commanding the Department of Arizona, to the Commander of the Military Division of the Pacific, to the Secretary of War, and to Hon. R. C. McCormick, our delegate to Congress.

APPROVED February 14th, 1873.



MEMORIALS.

MEMORIALS.

MEMORIAL

Regarding Indian Reservations.

To the Senate and House of Representatives of the United States of America in Congress assembled :

Your petitioners, the Legislative Assembly of the Territory of Arizona, respectfully represent to your honorable bodies that, by a recent order of the President of the United States, the White Mountain Indian Reservation has been extended so as to include the whole valley of the Gila river from the line of New Mexico down said river a distance of two hundred miles; your petitioners further represent that no portion of said valley of the Gila has been or will be used by the Indians, except at or near the mouth of the San Carlos; that the White Mountain Indians have never cultivated lands less than forty miles north of said river, and have an abundance of land upon which to raise a support, and will not cultivate nor inhabit the valley of the Gila adjacent to their reserve, and the Indians about to be removed from Camp Grant to the San Carlos will have an abundance of land and more than they can use in the San Carlos valley and the Gila adjacent thereto, and will not occupy or inhabit the Gila above, if reserved for them.

Your petitioners further represent that a settlement has already commenced, and large irrigating canals are now being constructed in the valley of the Gila, a short distance above old Camp Goodwin; that at this point is found the largest body of arable land in Arizona, and if opened to civilization is destined to become the largest farming settlement in the Territory; that many have settled there in good faith, and if now driven off will be compelled to abandon all they have; that by excepting this portion of the Gila valley from the reserve, the rights and interests of the Indians will not in the least be impaired, and simple justice will be done to a large number of industrious citizens, and the prosperity of the Territory will be greatly advanced.

Therefore, be it resolved by the Legislative Assembly of the Territory of Arizona: That our Delegate in Congress be and he is hereby requested to use all honorable means to bring the subject to the earnest and favorable consideration of Congress; and be it further *resolved*, that the Secretary of the Territory be requested to transmit a copy of the foregoing memorial and resolution to our Delegate in Congress.

APPROVED February 7th, 1873.

MEMORIAL

Asking for the donation of land to encourage sinking of Artesian wells.

To the Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialists of the Legislative Assembly of the Territory of Arizona most respectfully represent to your honorable bodies, that there are vast tracts of land in this Territory covered with nutritious grasses and capable of producing all kinds of vegetation in abundance, if supplied with water.

Your memorialists believe, by sinking Artesian wells, that most, if not all, of these lands may be reclaimed and made to contribute to the support of large numbers of people, and add greatly to the wealth, happiness and prosperity of the whole country.

Your memorialists would further state that the cost of sinking these wells is very great, and, without some assistance from the government, by the donation of lands, individuals cannot afford the expense and risk of sinking them; therefore, your memorialists most earnestly and respectfully urge that a reasonable donation of the public lands be given to any person, who obtains water on these dry lands by means of Artesian wells.

Therefore be it *resolved* by the House of Representatives, the Council concurring, of the Territory of Arizona, that our Delegate in Congress be, and he is hereby required to use all honorable means to bring this subject to the earnest and favorable consideration of Congress; and be it further *resolved*,

that the Secretary of the Territory be requested to transmit a copy of the foregoing memorial and resolution to our Delegate in Congress, and also a copy to each of the Governors of the States of California, Nevada and Texas, and the Territories of Utah, Idaho, Montana, Wyoming, Colorado and New Mexico, with a request that the same be presented to the Legislatures of the several States and Territories named, for their co-operation, to obtain the object set forth in the foregoing memorial.

APPROVED February 10th, 1873.

MEMORIAL

To the Senate and House of Representatives of the Congress of the United States :

Your petitioners, the Legislative Assembly of the Territory of Arizona, beg leave to represent to your honorable bodies, that the 16th and 36th sections of the public lands have been donated to the several States for school purposes, and also an amount equal to thirty thousand acres for each Senator and Representative in Congress for the benefit of Agricultural Colleges and the Mechanic Arts, and your petitioners further state that, in the infant establishment of free schools, with limited means, the necessity for the benefits of the proceeds of the sales of said lands are more urgent than at a later period.

Your petitioners would further represent that the Legislative Assembly of the Territory of Arizona have already provided by law for the acceptance of said grants of land.

We therefore earnestly ask that said lands may be ceded to the Territory of Arizona to be sold, and the interest arising from such sales to be used for the benefit of public schools.

Now, therefore, *resolved*, that our delegate in Congress be, and he hereby is, instructed to use all honorable means to secure such action by Congress, as to carry out the wishes expressed in the foregoing memorial, and the Secretary of the Territory is hereby instructed to forward a copy of this memorial to our delegate in Congress.

APPROVED February 14th, 1873.





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